

Calendar No. 370

105TH CONGRESS
2^D Session

S. 1415

[Report No. 105-180]

A BILL

To reform and restructure the processes by which tobacco products are manufactured, marketed, and distributed, to prevent the use of tobacco products by minors, to redress the adverse health effects of tobacco use, and for other purposes.

MAY 13, 1998

Ordered referred to the Committee on Finance, until 9:00 p.m. on Thursday, May 14, 1998, to report or be discharged

MAY 14 (legislative day, MAY 13), 1998

Reported with amendments

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IN THE SENATE OF THE UNITED STATES

NOVEMBER 7, 1997

Mr. MCCAIN (for himself, Mr. HOLLINGS, Mr. BREAUX, and Mr. GORTON) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

MAY 1, 1998

Reported by Mr. MCCAIN, with an amendment in the nature of a substitute

[Strike all after the enacting clause and insert the part printed in italic]

MAY 13, 1998

Ordered referred to the Committee on Finance, until 9:00 p.m. on Thursday, May 14, 1998, to report or be discharged

MAY 14 (legislative day, MAY 13), 1998

Reported by Mr. ROTH, with amendments

[Omit the part in boldface brackets and insert the part printed in bold italic]

A BILL

To reform and restructure the processes by which tobacco products are manufactured, marketed, and distributed, to prevent the use of tobacco products by minors, to

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

4 (a) SHORT TITLE.—This Act may be cited as the
5 “~~Universal Tobacco Settlement Act~~”.

6 (b) TABLE OF CONTENTS.—The table of contents of
7 this Act is as follows:

See: 1. Short title; table of contents.
See: 2. Findings.
See: 3. Purposes.

~~TITLE I—REGULATION OF THE TOBACCO INDUSTRY~~

~~Sec. 100. Definitions.~~

Subtitle A—Restriction on Marketing and Advertising

Sec. 101. Prohibitions on advertising.

Sec. 102. General restrictions.

Sec. 103. Format and content requirements for labeling and advertising.

Sec. 104. Statement of intended use.

Sec. 105. Ban on nontobacco items and services; contests and games of chance,
and sponsorship of events.

Sec. 106. Use of product descriptors.

Subtitle B—Warnings, Labeling and Packaging

Sec. 111. Cigarette warnings.

Sec. 112. Smokeless tobacco warnings.

Sec. 113. Ingredients.

Sec. 114. Enforcement, regulations, and construction.

Sec. 115. Preemption.

Sec. 116. Reports.

Sec. 117. Exports.

Sec. 118. Repeals.

Subtitle C—Restriction on Access to Tobacco Products

See: 121. Requirements relating to retailers.
See: 122. Manufacture, sale, and distribution.

Subtitle D—Licensing of Retail Tobacco Sellers

~~Sec. 131. Establishment of program.~~
~~Sec. 132. Requirements.~~

- Sec. 133. Penalties, revocations and suspensions.
- Sec. 134. Federal licensing of military and other entities.

Subtitle E—Regulation of Tobacco Product Development and Manufacturing

- Sec. 141. Reference.
- Sec. 142. Treatment of tobacco products as drugs.
- Sec. 143. Health and safety regulation of tobacco products.

Subtitle F—Compliance Plans and Corporate Culture

- Sec. 151. Compliance plans.
- Sec. 152. Compliance programs.
- Sec. 153. Whistleblower protections.
- Sec. 154. Provisions relating to lobbying.
- Sec. 155. Termination of certain entities.
- Sec. 156. Enforcement.

TITLE H—REDUCTION IN UNDERAGE TOBACCO USE

- Sec. 201. Purpose.
- Sec. 202. Determination of underage use base percentages.
- Sec. 203. Annual daily incidence of underage use of tobacco products.
- Sec. 204. Required reduction in underage tobacco use.
- Sec. 205. Application of surcharges.
- Sec. 206. Abatement procedures.

TITLE III—STANDARDS TO REDUCE INVOLUNTARY EXPOSURE TO TOBACCO SMOKE

- Sec. 301. Definitions.
- Sec. 302. Smoke-free environment policy.
- Sec. 303. Citizen actions.
- Sec. 304. Preemption.
- Sec. 305. Regulations.
- Sec. 306. Effective date.

TITLE IV—NATIONAL TOBACCO SETTLEMENT TRUST FUND

- Sec. 401. Establishment of Trust Fund.
- Sec. 402. Liability of industry sources.
- Sec. 403. Enforcement.

TITLE V—PUBLIC HEALTH AND OTHER PROGRAMS

Subtitle A—Public Health Block Grant Program

- Sec. 501. Public Health Trust Fund.
- Sec. 502. Block grants to States.
- Sec. 503. Allotments.
- Sec. 504. Use of funds.
- Sec. 505. Withholding of funds.

Subtitle B—Other Programs

- Sec. 511. National Smoking Cessation Program.
- Sec. 512. National Reduction in Tobacco Usage Program.
- Sec. 513. National Tobacco-Free Public Education Program.
- Sec. 514. National Event Sponsorship Program.

Sec. 515. National Community Action Program.
 Sec. 516. National Cessation Research Program.
 Sec. 517. Use of surcharge payments.

TITLE VI—CONSENT DECREES, NON-PARTICIPATING MANUFACTURERS, AND STATE ENFORCEMENT

Sec. 601. Purposes.

Subtitle A—Consent Decrees and Non-Participating Manufacturers

Sec. 611. Consent decrees.
 Sec. 612. National tobacco control protocol.
 Sec. 613. Non-participating manufacturers.

Subtitle B—State Enforcement

Sec. 621. Requirement of no sale to minors law.
 Sec. 622. State reporting.
 Sec. 623. Reduction in State payments.

TITLE VII—PROVISIONS RELATING TO TOBACCO-RELATED CIVIL ACTIONS

Sec. 701. General immunity.
 Sec. 702. Civil liability for past conduct.
 Sec. 703. Civil liability for future conduct.
 Sec. 704. Non-participating manufacturers.

TITLE VIII—PUBLIC DISCLOSURE OF HEALTH RESEARCH

Sec. 801. Purpose.
 Sec. 802. National Tobacco Document Depository.

TITLE IX—ASSISTANCE TO TOBACCO GROWERS AND COMMUNITIES

Sec. 1001. Short title; table of contents.
 Sec. 1002. Definitions.

SUBTITLE A—TOBACCO COMMUNITY REVITALIZATION TRUST FUND

Sec. 1011. Establishment of Trust Fund.
 Sec. 1012. Contributions by tobacco product manufacturers and importers.

SUBTITLE B—AGRICULTURAL MARKET TRANSITION ASSISTANCE

Sec. 1021. Payments for lost tobacco quota.
 Sec. 1022. Industry payments for all Department costs associated with tobacco
 production.
 Sec. 1023. Tobacco community economic development grants.
 Sec. 1024. Modifications in Federal tobacco programs.

SUBTITLE C—FARMER AND WORKER TRANSITION ASSISTANCE

Sec. 1031. Tobacco worker transition program.
 Sec. 1032. Farmer opportunity grants.

SUBTITLE D—IMMUNITY

Sec. 1041. General immunity for tobacco producers and warehousemen.

TITLE IX—EFFECTIVE DATES AND OTHER PROVISIONS

Sec. 901. Effective dates.

Sec. 902. Native Americans.

Sec. 903. Preemption.

1 **SEC. 2. FINDINGS.**

2 (a) **GENERAL FINDINGS.**—Congress makes the fol-
3 lowing findings:

4 (1) The Food and Drug Administration and
5 other public health authorities view the use of to-
6 bacco products by the nation's children as a “pedi-
7 atric disease” of epic and worsening proportions that
8 results in new generations of tobacco-dependent chil-
9 dren and adults.

10 (2) There is a consensus within the scientific
11 and medical communities that tobacco products are
12 inherently dangerous and cause cancer, heart dis-
13 ease, and other serious adverse health effects.

14 (3) The Food and Drug Administration and
15 other health authorities have concluded that virtually
16 all new users of tobacco products are under the age
17 of 18. Virtually all Federal, State, and local officials
18 and entities believe that tobacco advertising and
19 marketing contribute significantly to the use of nico-
20 tine-containing tobacco products by adolescents and
21 as such, sweeping new restriction on the sale, pro-

1 motion, and distribution of such products are need-
2 ed.

3 (4) Federal, State, and local governments lack
4 many of the legal means and resources needed to ad-
5 dress the societal problems caused by the use of to-
6 bacco products.

7 (5) Public health authorities believe that the so-
8 cietal benefits of enacting tobacco settlement legisla-
9 tion in human and economic terms would be vast.
10 The Food and Drug Administration found that re-
11 ducing underage tobacco use 50 percent “would pre-
12 vent well over 60,000 early deaths”. The Food and
13 Drug Administration has estimated that the mone-
14 tary value of the regulations promulgated as a result
15 of this Act will be worth up to \$43,000,000,000 per
16 year in reduced medical costs, improved productivity,
17 and the benefit of avoiding the premature death of
18 loved ones.

19 (6) The unique position occupied by tobacco in
20 the history and economy of the United States, the
21 magnitude of the actual and potential tobacco-relat-
22 ed litigation, the need to avoid the cost, expense, un-
23 certainty, and inconsistency associated with such
24 protracted litigation, the need to limit the sale, dis-
25 tribution, marketing, and advertising of tobacco

1 products to persons of legal age, and the need to
2 educate the public (especially young people) of the
3 health effects of using tobacco products all dictate
4 that it would be in the public interest to enact legis-
5 lation to facilitate a resolution of such matters.

6 (b) FINDINGS RELATED TO INTERSTATE COMMERCE
7 AND THE JUDICIAL SYSTEM.—Congress makes the follow-
8 ing findings:

9 (1) The sale, distribution, marketing, advertis-
10 ing, and use of tobacco products are activities sub-
11 stantially affecting interstate commerce. Such prod-
12 ucts are sold, marketed, advertised, and distributed
13 in interstate commerce on a nationwide basis and
14 have a substantial effect on the economy of the
15 United States.

16 (2) The sale, distribution, marketing, advertis-
17 ing, and use of tobacco products are activities that
18 substantially affect interstate commerce by virtue of
19 the health care and other costs that Federal and
20 State governmental authorities have incurred be-
21 cause of the usage of tobacco products.

22 (3) Various civil actions brought by State attor-
23 neys general, cities, counties, the Commonwealth of
24 Puerto Rico, third-party payors, and other private
25 classes and individuals to recover damages relating

1 to tobacco-related diseases, conditions and products
2 are pending throughout the United States, of these
3 actions are slow-moving, expensive, and burdensome
4 not only for the litigants but also for Federal and
5 State judicial systems.

6 **SEC. 3. PURPOSES.**

7 It is the purpose of this Act to—

8 (1) reiterate and enhance the authority of the
9 Food and Drug Administration to regulate tobacco
10 products and provide for tobacco industry funding of
11 the oversight activities of the Administration;

12 (2) ban all outdoor tobacco advertising and ban
13 all cartoon characters and human figures used in
14 connection with tobacco advertising;

15 (3) provide for the funding by the tobacco in-
16 dustry of an aggressive Federal enforcement pro-
17 gram relating to tobacco advertising and distribu-
18 tion, including a State-administered retail licensing
19 system to prevent minors from obtaining tobacco
20 products;

21 (4) subject the tobacco industry to severe finan-
22 cial penalties in the event that underage tobacco
23 usage does not decline radically over the next 10
24 years;

1 (5) provide for the establishment of national
2 standards to control the manufacturing of tobacco
3 products and the ingredients used in such products;

4 (6) provide certain regulatory powers to the
5 Food and Drug Administration to encourage the de-
6 velopment and marketing by the tobacco industry of
7 “less hazardous tobacco products”, including the
8 power to regulate the level of nicotine in such prod-
9 ucts;

10 (7) require the manufacturers of tobacco prod-
11 ucts to disclose all present and future non-public in-
12 ternal laboratory research regarding tobacco prod-
13 ucts;

14 (8) establish a minimum Federal standard to
15 limit smoking in public places;

16 (9) provide for the establishment of a National
17 Tobacco Settlement Trust Fund to be funded by the
18 tobacco industry and used in accordance with this
19 Act;

20 (10) provide for the establishment of a national
21 education-oriented counter advertising and tobacco
22 control campaign to be funded through the National
23 Tobacco Settlement Trust Fund;

24 (11) provide annual payments to States to fund
25 health benefits programs and to create a tobacco

1 products liability judgments and settlements fund to
 2 be funded through the National Tobacco Settlement
 3 Trust Fund; and

4 (12) provide for the establishment of a national
 5 program of smoking cessation to be funded through
 6 the National Tobacco Settlement Trust Fund.

7 **TITLE I—REGULATION OF THE** 8 **TOBACCO INDUSTRY**

9 **SEC. 100. DEFINITIONS.**

10 In this Act:

11 (1) BRAND.—The term “brand” means a vari-
 12 ety of a tobacco product distinguished by the tobacco
 13 used, tar content, nicotine content, flavoring used,
 14 size, filtration, or packaging.

15 (2) CIGAR.—The term “cigar” means any roll
 16 of tobacco wrapped in leaf tobacco or in any sub-
 17 stance containing tobacco (other than any roll of to-
 18 bacco which is a cigarette or cigarillo within the
 19 meaning of paragraph (3) or (4)).

20 (3) CIGARETTE.—The term “cigarette” means
 21 any product which contains nicotine, is intended to
 22 be burned under ordinary conditions of use, and con-
 23 sists of—

24 (A) any roll of tobacco wrapped in paper
 25 or in any substance not containing tobacco; and

1 (B) any roll of tobacco wrapped in any
2 substance containing tobacco which, because of
3 its appearance, the type of tobacco used in the
4 filler, or its packaging and labeling, is likely to
5 be offered to, or purchased by, consumers as a
6 cigarette described in subparagraph (A).

7 (4) CIGARILLOS.—The term “cigarillos” means
8 any roll of tobacco wrapped in leaf tobacco or any
9 substance containing tobacco (other than any roll of
10 tobacco which is a cigarette within the meaning of
11 paragraph (3)) and as to which 1,000 units weigh
12 not more than 3 pounds.

13 (5) CIGARETTE TOBACCO.—The term “cigarette
14 tobacco” means any product that consists of loose
15 tobacco that contains or delivers nicotine and is in-
16 tended for use by persons in a cigarette. Unless oth-
17 erwise stated, the requirements of this Act pertain-
18 ing to cigarettes shall also apply to cigarette to-
19 bacco.

20 (6) COMMERCE.—The term “commerce”
21 means—

22 (A) commerce between any State, the Dis-
23 trict of Columbia, the Commonwealth of Puerto
24 Rico, Guam, the Virgin Islands, American

1 Samoa, the Northern Mariana Islands or any
2 territory or possession of the United States;

3 ~~(B) commerce between points in any State;~~
4 ~~the District of Columbia, the Commonwealth of~~
5 ~~Puerto Rico, Guam, the Virgin Islands, Amer-~~
6 ~~ican Samoa, the Northern Mariana Islands or~~
7 ~~any territory or possession of the United States;~~
8 ~~or~~

9 ~~(C) commerce wholly within the District of~~
10 ~~Columbia, Guam, the Virgin Islands, American~~
11 ~~Samoa, the Northern Mariana Islands, or any~~
12 ~~territory or possession of the United States.~~

13 ~~(7) COMMISSIONER.—The term “Commis-~~
14 ~~sioner” means the Commissioner of Food and~~
15 ~~Drugs.~~

16 ~~(8) DISTRIBUTOR.—The term “distributor”~~
17 ~~means any person who furthers the distribution of~~
18 ~~tobacco products, whether domestic or imported, at~~
19 ~~any point from the original place of manufacture to~~
20 ~~the person who sells or distributes the product to in-~~
21 ~~dividuals for personal consumption. Such term shall~~
22 ~~not include common carriers.~~

23 ~~(9) LITTLE CIGAR.—The term “little cigar”~~
24 ~~means any roll of tobacco wrapped in leaf tobacco or~~
25 ~~any substance containing tobacco (other than any~~

1 roll of tobacco which is a cigarette within the mean-
 2 ing of subsection (1)) and as to which 1,000 units
 3 weigh not more than 3 pounds.

4 (10) MANUFACTURER.—The term “manufac-
 5 turer” means any person, including any repacker or
 6 relabeler, who manufactures, fabricates, assembles,
 7 processes, or labels a finished tobacco product.

8 (11) NICOTINE.—The term “nicotine” means
 9 the chemical substance named 3-(1-Methyl-2-
 10 pyrrolidiny) pyridine or $C_{10}H_{14}N_2$, including any
 11 salt or complex of nicotine.

12 (12) PACKAGE.—The term “package” means a
 13 pack, box, carton, or container of any kind in which
 14 tobacco products are offered for sale, sold, or other-
 15 wise distributed to consumers.

16 (13) PERSON.—The term “person” means an
 17 individual, partnership, corporation, or any other
 18 business or legal entity.

19 (14) PIPE TOBACCO.—The term “pipe tobacco”
 20 means any loose tobacco that, because of its appear-
 21 ance, type, packaging, or labeling, is likely to be of-
 22 fered to, or purchased by, consumers as a tobacco
 23 product to be smoked in a pipe.

24 (15) POINT OF SALE.—The term “point of
 25 sale” means any location at which an individual can

1 purchase or otherwise obtain tobacco products for
2 personal consumption.

3 (16) RETAILER.—The term “retailer” means
4 any person who sells tobacco products to individuals
5 for personal consumption, or who operates a facility
6 where vending machines or self-service displays are
7 permitted under this title.

8 (17) SALE.—The term “sale” includes the sell-
9 ing, providing samples of, or otherwise making to-
10 bacco products available for personal consumption in
11 any place within the scope of this Act.

12 (18) SECRETARY.—The term “Secretary”
13 means the Secretary of Health and Human Services.

14 (19) SMOKELESS TOBACCO.—The term “smoke-
15 less tobacco” means any product that consists of
16 cut, ground, powdered, or leaf tobacco that contains
17 nicotine and that is intended to be placed in the oral
18 or nasal cavity.

19 (20) STATE.—The term “State” includes the
20 several States, the District of Columbia, the Com-
21 monwealth of Puerto Rico, Guam, the Virgin Is-
22 lands, American Samoa, the Northern Mariana Is-
23 lands, and any other territory or possession of the
24 United States. Such term includes any political divi-
25 sion of any State.

1 ~~(21) TOBACCO.—~~The term “tobacco” means to-
 2 bacco in its unmanufactured form.

3 ~~(22) TOBACCO PRODUCT.—~~The term “tobacco
 4 product” means cigars, cigarettes, cigarillos, ciga-
 5 rette tobacco, little cigars, pipe tobacco, and smoke-
 6 less tobacco.

7 ~~(23) TRUST FUND.—~~The term “Trust Fund”
 8 means the National Tobacco Settlement Trust Fund
 9 established under section 401.

10 **Subtitle A—Restriction on** 11 **Marketing and Advertising**

12 **SEC. 101. PROHIBITIONS ON ADVERTISING.**

13 ~~(a) PROHIBITION ON OUTDOOR ADVERTISING.—~~

14 ~~(1) IN GENERAL.—~~No manufacturer, distribu-
 15 tor, or retailer may use any form of outdoor tobacco
 16 product advertising, including billboards, posters, or
 17 placards.

18 ~~(2) STADIA AND ARENAS.—~~Except as otherwise
 19 provided in this title, a manufacturer, distributor, or
 20 retailer shall not advertise tobacco products in any
 21 arena or stadium where athletic, musical, artistic, or
 22 other social or cultural events or activities occur.

23 ~~(b) PROHIBITION ON USE OF HUMAN IMAGES AND~~
 24 ~~CARTOONS.—~~No manufacturer, distributor, or retailer
 25 may use a human image or a cartoon character or cartoon-

1 type character in its advertising, labeling, or promotional
 2 material with respect to a tobacco product.

3 ~~(c) PROHIBITION ON ADVERTISING ON THE INTER-~~
 4 ~~NET.—~~No manufacturer, distributor, or retailer may use
 5 the Internet to advertise tobacco products unless such an
 6 advertisement is inaccessible in or from the United States.

7 ~~(d) PROHIBITION ON POINT-OF-SALE ADVERTIS-~~
 8 ~~ING.—~~

9 ~~(1) IN GENERAL.—~~Except as otherwise pro-
 10 vided in this subsection, no manufacturer, distribu-
 11 tor, or retailer may use point-of-sale advertising of
 12 tobacco products.

13 ~~(2) ADULT-ONLY STORES AND TOBACCO OUT-~~
 14 ~~LETS.—~~Paragraph (1) shall not apply to point of
 15 sale advertising at adult-only stores and tobacco out-
 16 lets.

17 ~~(3) PERMISSIBLE ADVERTISING.—~~

18 ~~(A) IN GENERAL.—~~Each manufacturer of
 19 tobacco products may display not more than 2
 20 separate point-of-sale advertisements in or at
 21 each location at which tobacco products are of-
 22 fered for sale.

23 ~~(B) MARKET SHARE MANUFACTURERS.—~~A
 24 manufacturer with at least 25 percent of the
 25 market share of the tobacco product involved

1 may display an additional point-of-sale adver-
2 tisement in or at each location at which tobacco
3 products are offered for sale.

4 (C) RETAILERS.—A retailer may have not
5 more than 1 point-of-sale advertisement relating
6 to the retailer's own or its wholesaler's con-
7 tracted retailer or private label brand of tobacco
8 product. No manufacturer or distributor may
9 enter into any arrangement with a retailer to
10 limit the ability of the retailer to display any
11 form of permissible point-of-sale advertisement
12 or promotional material originating with an-
13 other manufacturer or distributor.

14 (4) LIMITATIONS.—

15 (A) IN GENERAL.—A point of sale adver-
16 tisement permitted under this subsection shall
17 be comprised of a display area that is not large-
18 er than 576 square inches (either individually
19 or in the aggregate) and shall consist only of
20 black letters on a white background or other
21 recognized typographical marks. Such advertise-
22 ment shall not be attached to nor located within
23 2 feet of any fixture on which candy is dis-
24 played for sale.

1 (B) AUDIO AND VIDEO FORMATS.—Audio
 2 and video advertisements permitted under sec-
 3 tion 103(e) may be distributed to individuals
 4 who are 18 years of age or older at point of sale
 5 but may not be played or viewed at such point
 6 of sale.

7 (C) DISPLAY FIXTURES.—Display fixtures
 8 in the form of signs consisting of brand name
 9 and price and not larger than 2 inches in height
 10 are permitted.?

11 (5) DEFINITION.—For purposes of this sub-
 12 section, the term “point-of-sale advertising” means
 13 all printed or graphical materials bearing the brand
 14 name (alone or in conjunction with any other word),
 15 logo, motto, selling message, recognizable color or
 16 pattern of colors, or any other indicia of product
 17 identification similar or identical to those used for
 18 tobacco products which, when used for its intended
 19 purpose, can reasonably be anticipated to be seen by
 20 customers at a location at which tobacco products
 21 are offered for sale.

22 **SEC. 102. GENERAL RESTRICTIONS.**

23 (a) RESTRICTION ON PRODUCT NAMES.—A manu-
 24 facturer shall not use a trade or brand name of a non-
 25 tobacco product as the trade or brand name for a cigarette

1 or smokeless tobacco product, except for a tobacco product
 2 whose trade or brand name was on both a tobacco product
 3 and a nontobacco product that were sold in the United
 4 States on or before January 1, 1995.

5 (b) ADVERTISING LIMITED TO FDA SPECIFIED
 6 MEDIA.—

7 (1) IN GENERAL.—A manufacturer, distributor,
 8 or retailer may, in accordance with this title, dis-
 9 seminate or cause to be disseminated advertising or
 10 labeling which bears a tobacco product brand name
 11 (alone or in conjunction with any other word) or any
 12 other indicia of tobacco product identification only in
 13 newspapers, in magazines, in periodicals or other
 14 publications (whether periodic or limited distribu-
 15 tion); on billboards, posters and placards in accord-
 16 ance with section 101(a); in nonpoint-of-sale pro-
 17 motional material (including direct mail); in point-
 18 of-sale promotional material; and in audio or video
 19 formats delivered at a point-of-sale.

20 (2) LIMITATION.—A manufacturer, distributor,
 21 or retailer that intends to disseminate, or to cause
 22 to be disseminated, advertising or labeling for a to-
 23 bacco product in a medium that is not described in
 24 paragraph (1) shall notify the Commissioner not less
 25 than 30 days prior to the date on which such me-

1 dium is to be used. Such notice shall describe the
 2 medium and discuss the extent to which the adver-
 3 tising or labeling may be seen by individuals who are
 4 under 18 years of age.

5 ~~(3) ACTION BY COMMISSIONER.—~~

6 ~~(c) RESTRICTION ON PLACEMENT IN ENTERTAIN-~~
 7 ~~MENT MEDIA.—~~

8 ~~(1) IN GENERAL.—~~No payment shall be made
 9 by any manufacturer, distributor, or retailer for the
 10 placement of any tobacco product or tobacco product
 11 package or advertisement—

12 ~~(A) as a prop in any television program or~~
 13 ~~motion picture produced for viewing by the gen-~~
 14 ~~eral public; or~~

15 ~~(B) in a video or on a video game machine.~~

16 ~~(2) VIDEO GAME.—~~The term “video game”
 17 means any electronic amusement device that utilizes
 18 a computer, microprocessor, or similar electronic cir-
 19 cuitry and its own cathode ray tube, or is designed
 20 to be used with a television set or a monitor, that
 21 interacts with the user of the device.

22 ~~(d) RESTRICTIONS ON GLAMORIZATION OF TOBACCO~~
 23 ~~PRODUCTS.—~~No direct or indirect payment shall be made
 24 by any manufacturer, distributor, or retailer to any entity
 25 for the purpose of promoting the image or use of a tobacco

1 product through print or film media that appeals to indi-
 2 viduals under 18 years of age or through a live perform-
 3 ance by an entertainment artist that appeals to such indi-
 4 viduals.

5 **SEC. 103. FORMAT AND CONTENT REQUIREMENTS FOR LA-**
 6 **BELING AND ADVERTISING.**

7 (a) IN GENERAL.—Except as provided in subsections
 8 (b) and (c), each manufacturer, distributor, and retailer
 9 advertising or causing to be advertised, disseminating or
 10 causing to be disseminated, any labeling or advertising for
 11 a tobacco product shall use only black text on a white
 12 background.

13 (b) CERTAIN ADVERTISING EXCEPTED.—

14 (1) IN GENERAL.—Subsection (a) shall not
 15 apply to advertising—

16 (A) in any facility where vending machines
 17 and self-service displays are permitted under
 18 this title if the advertising involved—

19 (i) is not visible from outside of the
 20 facility; and

21 (ii) is affixed to a wall or fixture in
 22 the facility;

23 (B) that appears in any publication
 24 (whether periodic, limited, or controlled dis-

1 tribution) that the manufacturer, distributor, or
2 retailer demonstrates is an adult publication.

3 ~~(2) ADULT PUBLICATION.~~—For purposes of
4 paragraph ~~(1)(B)~~, the term “adult publication”
5 means a newspaper, magazine, periodical, or other
6 publication—

7 (A) whose readers under 18 years of age
8 constitute 15 percent or less of the total reader-
9 ship as measured by competent and reliable
10 survey evidence; and

11 (B) that is read by fewer than 2,000,000
12 individuals who are under 18 years of age as
13 measured by competent and reliable survey evi-
14 dence.

15 ~~(c) AUDIO OR VIDEO FORMATS.~~—Each manufac-
16 turer, distributor, and retailer advertising or causing to
17 be advertised any advertising for a tobacco product in an
18 audio or video format shall comply with the following:

19 (1) With respect to an audio format, the adver-
20 tising shall be limited to words only with no music
21 or sound effects.

22 (2) With respect to a video format, the advertis-
23 ing shall be limited to static black text only on a
24 white background. Any audio with the video adver-

1 tising shall be limited to words only with no music
2 or sound effects.

3 **SEC. 104. STATEMENT OF INTENDED USE.**

4 (a) **REQUIREMENT.**—Each manufacturer, distribu-
5 tor, and retailer advertising or causing to be advertised,
6 disseminating or causing to be disseminated, advertising
7 concerning cigarettes, cigarette tobacco, or smokeless to-
8 bacco products otherwise permitted under this title shall
9 include, as provided in section 502 of the Federal Food,
10 Drug, and Cosmetic Act (21 U.S.C. 352), the established
11 name of the product and a statement of the intended use
12 of the product as provided for in subsection (b).

13 (b) **USE STATEMENTS.**—

14 (1) **CIGARETTES.**—A statement of intended use
15 for cigarettes or cigarette tobacco is as follows
16 (whichever is appropriate):

17 Cigarettes—A Nicotine-Delivery Device for Per-
18 sons 18 or Older.

19 Cigarette Tobacco—A Nicotine-Delivery Device
20 for Persons 18 or Older.

21 (2) **SMOKELESS TOBACCO.**—A statement of in-
22 tended use for a smokeless tobacco product is as fol-
23 lows (whichever is appropriate):

24 Loose Leaf Chewing Tobacco—A Nicotine-De-
25 livery Device for Persons 18 or Older.

1 ~~Plug Chewing Tobacco—A Nicotine-Delivery~~
 2 ~~Device for Persons 18 or Older.~~

3 ~~Twist Chewing Tobacco—A Nicotine-Delivery~~
 4 ~~Device for Persons 18 or Older.~~

5 ~~Moist Snuff—A Nicotine-Delivery Device for~~
 6 ~~Persons 18 or Older.~~

7 ~~Dry Snuff—A Nicotine-Delivery Device for Per-~~
 8 ~~sons 18 or Older.~~

9 ~~(c) TYPE AND LOCATION.—Requirements with re-~~
 10 ~~spect to type size, style, font, and location shall be deter-~~
 11 ~~mined by the Commissioner.~~

12 ~~**SEC. 105. BAN ON NONTOBACCO ITEMS AND SERVICES,**~~
 13 ~~**CONTESTS AND GAMES OF CHANCE, AND**~~
 14 ~~**SPONSORSHIP OF EVENTS.**~~

15 ~~(a) BAN ON ALL NONTOBACCO MERCHANDISE.—No~~
 16 ~~manufacturer, importer, distributor, or retailer shall mar-~~
 17 ~~ket, license, distribute, sell, or cause to be marketed, li-~~
 18 ~~censed, distributed or sold any item (other than tobacco~~
 19 ~~products) or service which bears the brand name (alone~~
 20 ~~or in conjunction with any other word), logo, symbol,~~
 21 ~~motto, selling message, recognizable color or pattern of~~
 22 ~~colors, or any other indicia of product identification simi-~~
 23 ~~lar or identifiable to those used for any brand of tobacco~~
 24 ~~products.~~

1 (b) GIFTS, CONTESTS, AND LOTTERIES.—No manu-
 2 facturer, distributor, or retailer shall offer or cause to be
 3 offered to any person purchasing tobacco products any gift
 4 or item (other than a tobacco product) in consideration
 5 of the purchase of such products, or to any person in con-
 6 sideration of furnishing evidence, such as credits, proofs-
 7 of-purchase, or coupons, of such a purchase.

8 (c) SPONSORSHIP.—

9 (1) IN GENERAL.—No manufacturer, distribu-
 10 tor, or retailer shall sponsor or cause to be spon-
 11 sored any athletic, musical, artistic, or other social
 12 or cultural event, or any entry or team in any event,
 13 in which the brand name (alone or in conjunction
 14 with any other word), logo, motto, selling message,
 15 recognizable color or pattern of colors, or any other
 16 indicia of product identification similar or identical
 17 to those used for tobacco products is used.

18 (2) USE OF CORPORATE NAME.—A manufac-
 19 turer, distributor, or retailer may sponsor or cause
 20 to be sponsored any athletic, musical, artistic, or
 21 other social or cultural event in the name of the cor-
 22 poration which manufactures the tobacco product
 23 if—

1 (A) both the corporate name and the cor-
 2 poration were registered and in use in the
 3 United States prior to January 1, 1995; and

4 (B) the corporate name does not include
 5 any brand name (alone or in conjunction with
 6 any other word), logo, symbol, motto, selling
 7 message, recognizable color or pattern of colors,
 8 or any other indicia or product identification
 9 identical or similar to, or identifiable with,
 10 those used for any brand of tobacco products.

11 **SEC. 106. USE OF PRODUCT DESCRIPTORS.**

12 (a) IN GENERAL.—With respect to a tobacco product,
 13 the label of which bears a product description (such as
 14 “light” or “low tar”), such label shall also contain, and
 15 any advertisement concerning such product shall contain,
 16 a mandatory disclaimer, to be established by the Sec-
 17 retary, that states that such product has not been shown
 18 to be less hazardous than another product of that type.

19 (b) RULE OF CONSTRUCTION.—Nothing in this sec-
 20 tion shall be construed to limit the authority of the Food
 21 and Drug Administration with respect to words used as
 22 product descriptors.

Subtitle B—Warnings, Labeling and Packaging

SEC. 111. CIGARETTE WARNINGS.

(a) IN GENERAL.—

(1) PACKAGING.—It shall be unlawful for any person to manufacture, package, or import for sale or distribution within the United States any cigarettes the package of which fails to bear, in accordance with the requirements of this section, one of the following labels:

WARNING: Cigarettes Are Addictive.

WARNING: Tobacco Smoke Can Harm Your Children.

WARNING: Cigarettes Cause Fatal Lung Disease.

WARNING: Cigarettes Cause Cancer.

WARNING: Cigarettes Cause Strokes And Heart Disease.

WARNING: Smoking During Pregnancy Can Harm Your Baby.

WARNING: Smoking Can Kill You.

WARNING: Tobacco Smoke Causes Fatal Lung Disease In Nonsmokers.

WARNING: Quitting Smoking Now Greatly Reduces Serious Risks To Your Health.

(2) ADVERTISING.—It shall be unlawful for any manufacturer or importer of cigarettes to advertise or cause to be advertised within the United States any cigarette unless the advertising bears, in accordance with the requirements of this section, one of the following labels:

WARNING: Cigarettes Are Addictive.

WARNING: Tobacco Smoke Can Harm Your Children.

WARNING: Cigarettes Cause Fatal Lung Disease.

WARNING: Cigarettes Cause Cancer.

WARNING: Cigarettes Cause Strokes And Heart Disease.

WARNING: Smoking During Pregnancy Can Harm Your Baby.

WARNING: Smoking Can Kill You.

WARNING: Tobacco Smoke Causes Fatal Lung Disease In Nonsmokers.

WARNING: Quitting Smoking Now Greatly Reduces Serious Risks To Your Health.

(b) REQUIREMENTS FOR LABELING.—

(1) LOCATION.—Each label statement required by paragraph (1) of subsection (a) shall be located on the upper portion of the front panel of the ciga-

1 rette package (or carton) and occupy not less than
2 25 percent of such front panel.

3 ~~(2) TYPE AND COLOR.—~~With respect to each
4 label statement required by paragraph (1) of sub-
5 section (a), the phrase “WARNING” shall appear in
6 capital letters and the label statement shall be print-
7 ed in 17 point type with adjustments as determined
8 appropriate by the Commissioner to reflect the
9 length of the required statement. All the letters in
10 the label shall appear in conspicuous and legible
11 type, in contrast by typography, layout, or color with
12 all other printed material on the package, and be
13 printed in an alternating black-on-white and white-
14 on-black format as determined appropriate by the
15 Commissioner.

16 ~~(3) EXCEPTION.—~~The provisions of paragraph
17 (1) shall not apply in the case of a flip-top cigarette
18 package (offered for sale on the date of enactment
19 of this Act) where the front portion of the flip-top
20 does not comprise at least 25 percent of the front
21 panel. In the case of such a package, the label state-
22 ment required by paragraph (1) of subsection (a)
23 shall occupy the entire front portion of the flip top.

24 ~~(c) REQUIREMENTS FOR ADVERTISING.—~~

1 (1) LOCATION.—Each label statement required
 2 by paragraph (2) of subsection (a) shall occupy not
 3 less than 20 percent of the area of the advertisement
 4 involved.

5 (2) TYPE AND COLOR.—

6 (A) TYPE.—With respect to each label
 7 statement required by paragraph (2) of sub-
 8 section (a), the phrase “WARNING” shall ap-
 9 pear in capital letters and the label statement
 10 shall be printed in the following types:

11 (i) With respect to whole page adver-
 12 tisements on broadsheet newspaper—45
 13 point type.

14 (ii) With respect to half page adver-
 15 tisements on broadsheet newspaper—39
 16 point type.

17 (iii) With respect to whole page adver-
 18 tisements on tabloid newspaper—39 point
 19 type.

20 (iv) With respect to half page adver-
 21 tisements on tabloid newspaper—27 point
 22 type.

23 (v) With respect to DPS magazine ad-
 24 vertisements—31.5 point type.

1 (vi) With respect to whole page maga-
 2 zine advertisements—31.5 point type.

3 (vii) With respect to 28cm x 3 column
 4 advertisements—22.5 point type.

5 (viii) With respect to 20cm x 2 col-
 6 umn advertisements—15 point type.

7 The Commissioner may revise the required type
 8 sizes as the Commissioner determines appro-
 9 priate within the 20 percent requirement.

10 (B) COLOR.—All the letters in the label
 11 under this paragraph shall appear in conspicu-
 12 ous and legible type, in contrast by typography,
 13 layout, or color with all other printed material
 14 on the package, and be printed in an alternat-
 15 ing black-on-white and white-on-black format as
 16 determined appropriate by the Commissioner.

17 (d) ROTATION OF LABEL STATEMENTS.—

18 (1) IN GENERAL.—Except as provided in para-
 19 graph (2), the label statements specified in para-
 20 graphs (1) and (2) of subsection (a) shall be rotated
 21 by each manufacturer or importer of cigarettes quar-
 22 terly in alternating sequence on packages of each
 23 brand of cigarettes manufactured by the manufac-
 24 turer or importer and in the advertisements for each
 25 such brand of cigarettes in accordance with a plan

submitted by the manufacturer or importer and approved by the Federal Trade Commission. The Federal Trade Commission shall approve a plan submitted by a manufacturer or importer of cigarettes which will provide the rotation required by this subsection and which assures that all of the labels required by paragraphs (1) and (2) will be displayed by the manufacturer or importer at the same time.

(2) APPLICATION OF OTHER ROTATION REQUIREMENTS.—

(A) IN GENERAL.—A manufacturer or importer of cigarettes may apply to the Federal Trade Commission to have the label rotation described in subparagraph (C) apply with respect to a brand style of cigarettes manufactured or imported by such manufacturer or importer if—

(i) the number of cigarettes of such brand style sold in the fiscal year of the manufacturer or importer preceding the submission of the application is less than $\frac{1}{4}$ of 1 percent of all the cigarettes sold in the United States in such year; and

(ii) more than $\frac{1}{2}$ of the cigarettes manufactured or imported by such manu-

1 facturer or importer for sale in the United
2 States are packaged into brand styles
3 which meet the requirements of clause (i).

4 If an application is approved by the Commis-
5 sion, the label rotation described in subpara-
6 graph (C) shall apply with respect to the appli-
7 cant during the 1-year period beginning on the
8 date of the application approval.

9 (B) PLAN.—An applicant under subpara-
10 graph (A) shall include in its application a plan
11 under which the label statements specified in
12 paragraph (1) of subsection (a) will be rotated
13 by the applicant manufacturer or importer in
14 accordance with the label rotation described in
15 subparagraph (C).

16 (C) OTHER ROTATION REQUIREMENTS.—
17 Under the label rotation which the manufac-
18 turer or importer with an approved application
19 may put into effect, each of the labels specified
20 in paragraph (1) of subsection (a) shall appear
21 on the packages of each brand style of eiga-
22 rettes with respect to which the application was
23 approved an equal number of times within the
24 12-month period beginning on the date of the
25 approval by the Commission of the application.

1 (e) APPLICATION OF REQUIREMENT.—Subsection (a)
 2 does not apply to a distributor, a retailer of cigarettes who
 3 does not manufacture, package, or import cigarettes for
 4 sale or distribution within the United States.

5 (f) TELEVISION AND RADIO ADVERTISING.—It shall
 6 be unlawful to advertise cigarettes and little cigars on any
 7 medium of electronic communications subject to the juris-
 8 diction of the Federal Communications Commission.

9 **SEC. 112. SMOKELESS TOBACCO WARNINGS.**

10 (a) IN GENERAL.—

11 (1) PACKAGING.—It shall be unlawful for any
 12 person to manufacture, package, or import for sale
 13 or distribution within the United States any smoke-
 14 less tobacco product the package of which fails to
 15 bear, in accordance with the requirements of this
 16 section, one of the following labels:

17 WARNING: This Product May Cause Mouth
 18 Cancer.

19 WARNING: This Product May Cause Gum
 20 Disease And Tooth Loss.

21 WARNING: This Product Is Not A Safe Alter-
 22 native To Cigarettes.

23 WARNING: Smokeless Tobacco Is Addictive.

24 (2) ADVERTISING.—It shall be unlawful for any
 25 manufacturer or importer of smokeless tobacco prod-

1 acts to advertise or cause to be advertised within the
 2 United States any smokeless tobacco product unless
 3 the advertising bears, in accordance with the re-
 4 quirements of this section, one of the following la-
 5 bels:

6 ~~WARNING: This Product May Cause Mouth~~
 7 ~~Cancer.~~

8 ~~WARNING: This Product May Cause Gum~~
 9 ~~Disease And Tooth Loss.~~

10 ~~WARNING: This Product Is Not A Safe Alter-~~
 11 ~~native To Cigarettes.~~

12 ~~WARNING: Smokeless Tobacco Is Addictive.~~

13 (b) ~~REQUIREMENTS FOR LABELING.—~~

14 (1) ~~LOCATION.—~~Each label statement required
 15 by paragraph (1) of subsection (a) shall be located
 16 on the principal display panel of the product and oc-
 17 cupy not less than 25 percent of such panel.

18 (2) ~~TYPE AND COLOR.—~~With respect to each
 19 label statement required by paragraph (1) of sub-
 20 section (a), the phrase “WARNING” shall appear in
 21 capital letters and the label statement shall be print-
 22 ed in 17 point type with adjustments as determined
 23 appropriate by the Commissioner to reflect the
 24 length of the required statement. All the letters in
 25 the label shall appear in conspicuous and legible type

1 in contrast by typography, layout, or color with all
 2 other printed material on the package and be print-
 3 ed in an alternating black on white and white on
 4 black format as determined appropriate by the Com-
 5 missioner.

6 (c) ADVERTISING AND ROTATION.—The provisions of
 7 subsections (c) and (d)(1) of section 111 shall apply to
 8 advertisements for smokeless tobacco products and the ro-
 9 tation of the label statements required under subsection
 10 (a)(1) on such products.

11 (d) APPLICATION OF REQUIREMENT.—Subsection (a)
 12 does not apply to a distributor or a retailer of smokeless
 13 tobacco products who does not manufacture, package, or
 14 import such products for sale or distribution within the
 15 United States.

16 (e) TELEVISION AND RADIO ADVERTISING.—It shall
 17 be unlawful to advertise smokeless tobacco on any medium
 18 of electronic communications subject to the jurisdiction of
 19 the Federal Communications Commission.

20 **SEC. 113. INGREDIENTS.**

21 Each person who manufactures, packages, or imports
 22 cigarettes or smokeless tobacco products shall annually
 23 provide the Secretary with the information required under
 24 section 910 of the Federal Food, Drug, and Cosmetic Act
 25 (as added by section 143(3) of this Act).

1 **SEC. 114. ENFORCEMENT, REGULATIONS, AND CONSTRU-**
 2 **CTION.**

3 ~~(a) ENFORCEMENT.—~~

4 ~~(1) IN GENERAL.—A violation of section 111 or~~
 5 ~~112 or the regulations promulgated pursuant to this~~
 6 ~~subtitle shall be considered a violation of section 5~~
 7 ~~of the Federal Trade Commission Act.~~

8 ~~(2) FINES.—Any person who is found to violate~~
 9 ~~any provision of sections 111, 112, or 113(a) shall~~
 10 ~~be guilty of a misdemeanor and shall, on conviction~~
 11 ~~thereof, be subject to a fine of not more than~~
 12 ~~\$10,000.~~

13 ~~(b) INJUNCTIONS.—The several district courts of the~~
 14 ~~United States are vested with jurisdiction, for cause~~
 15 ~~shown, to prevent and restrain violations of this subtitle~~
 16 ~~upon the application of the Federal Trade Commission in~~
 17 ~~the case of a violation of section 111 or 112 or upon appli-~~
 18 ~~cation of the Attorney General of the United States acting~~
 19 ~~through the several United States attorneys in their sev-~~
 20 ~~eral districts in the case of a violation of section 113.~~

21 ~~(c) REGULATIONS.—Not later than 180 days after~~
 22 ~~the date of the enactment of this Act, the Federal Trade~~
 23 ~~Commission shall promulgate such regulations as it may~~
 24 ~~require to implement sections 111 and 112.~~

25 ~~(d) CONSTRUCTION.—Nothing in this subtitle (other~~
 26 ~~than the requirements of sections 111, 112, and 113) shall~~

1 be construed to limit, restrict, or expand the authority of
 2 the Federal Trade Commission with respect to unfair or
 3 deceptive acts or practices in the advertising of cigarettes
 4 or smokeless tobacco products.

5 **SEC. 115. PREEMPTION.**

6 (a) **FEDERAL ACTION.**—No statement relating to the
 7 use of cigarettes or smokeless tobacco products and
 8 health, other than the statements required by sections 111
 9 or 112, shall be required by any Federal agency to appear
 10 on any package or in any advertisement of cigarettes or
 11 a smokeless tobacco product.

12 (b) **STATE AND LOCAL ACTION.**—No statement relat-
 13 ing to the use of cigarettes or smokeless tobacco products
 14 and health, other than the statements required by sections
 15 111 and 112, shall be required by any State or local stat-
 16 ute or regulation to be included on any package or in any
 17 advertisement of cigarettes or a smokeless tobacco prod-
 18 uct.

19 (c) **EFFECT ON LIABILITY LAW.**—Except as other-
 20 wise provided in this Act, nothing in this subtitle shall re-
 21 lieve any person from liability at common law or under
 22 State statutory law to any other person.

23 **SEC. 116. REPORTS.**

24 (a) **SECRETARY'S REPORT.**—Not later than 6 months
 25 after the date of enactment of this Act, and biennially

1 thereafter, the Secretary shall prepare and submit to Con-
2 gress a report containing—

3 (1) a description of the effects of health edu-
4 cation efforts on the use of cigarettes and smokeless
5 tobacco products;

6 (2) a description of the use by the public of
7 cigarettes and smokeless tobacco products;

8 (3) an evaluation of the health effects of ciga-
9 rettes and smokeless tobacco products and the iden-
10 tification of areas appropriate for further research;
11 and

12 (4) such recommendations for legislation and
13 administrative action as the Secretary considers ap-
14 propriate.

15 (b) FTC REPORT.—Not later than 6 months after
16 the date of enactment of this Act, and biennially there-
17 after, the Federal Trade Commission shall prepare and
18 submit to Congress a report containing—

19 (1) a description of the current sales, advertis-
20 ing, and marketing practices associated with ciga-
21 rettes and smokeless tobacco products; and

22 (2) such recommendations for legislation and
23 administrative action as the Commission deems ap-
24 propriate.

1 **SEC. 117. EXPORTS.**

2 Packages of cigarettes or smokeless tobacco products
3 manufactured, imported, or packaged—

4 (1) for export from the United States; or

5 (2) for delivery to a vessel or aircraft, as sup-
6 plies, for consumption beyond the jurisdiction of the
7 internal revenue laws of the United States;

8 shall be exempt from the requirements of this subtitle; but
9 such exemptions shall not apply to cigarettes or smokeless
10 tobacco products manufactured, imported, or packaged for
11 sale or distribution to members or units of the Armed
12 Forces of the United States located outside of the United
13 States.

14 **SEC. 118. REPEALS.**

15 The following Acts are repealed:

16 (1) The Federal Cigarette Labeling and Adver-
17 tising Act (15 U.S.C. 1331 et seq.).

18 (2) The Comprehensive Smokeless Tobacco
19 Health Education Act of 1986 (15 U.S.C. 4401 et
20 seq.).

21 **Subtitle C—Restriction on Access**
22 **to Tobacco Products**

23 **SEC. 121. REQUIREMENTS RELATING TO RETAILERS.**

24 (a) **SALES TO MINORS PROHIBITED.**—No retailer
25 may distribute a tobacco product to any individual who
26 is under 18 years of age.

1 (b) PHOTO IDENTIFICATION.—

2 (1) REQUIREMENT.—Except as provided in
3 paragraph (2), each retailer shall verify, by means of
4 photographic identification containing the date of
5 birth of the bearer, that no individual purchasing a
6 tobacco product is under 18 years of age.

7 (2) EXCEPTION.—No verification under para-
8 graph (1) is required for any individual who is at
9 least 27 years of age.

10 (3) LOCATION OF PRODUCTS.—Except as pro-
11 vided in section 122(d), a retailer shall ensure that
12 all tobacco products are located in areas where cus-
13 tomers do not have access to the products.

14 (c) FACE-TO-FACE TRANSACTIONS.—Except as pro-
15 vided in section 122(c)(1), a retailer may sell tobacco
16 products only in a direct, face-to-face exchange without
17 the assistance of any electronic or mechanical device.

18 (d) OUT-OF-PACKAGE DISTRIBUTION.—No retailer
19 may break or otherwise open a tobacco product to sell or
20 distribute to individuals portions of such product (includ-
21 ing individual cigarettes or a number of cigarettes that
22 is smaller than the quantity in the minimum package size;
23 or any quantity of cigarette tobacco or smokeless tobacco
24 that is smaller than the smallest package distributed by
25 the retailer for individual consumer use).

1 (e) **RETAILER COMPLIANCE WITH RESPECT TO**
 2 **SELF-SERVICE.**—Each retailer shall ensure that all to-
 3 bacco-related self-service displays, advertising, labeling,
 4 and other items that are located in the establishment of
 5 the retailer and that do not comply with the requirements
 6 of this title are removed or are brought into compliance
 7 with the requirements of this title.

8 **SEC. 122. MANUFACTURE, SALE, AND DISTRIBUTION.**

9 (a) **MINIMUM CIGARETTE PACKAGE SIZE.**—Except
 10 as otherwise provided in this section, no manufacturer,
 11 distributor, or retailer may sell or cause to be sold, or dis-
 12 tribute or cause to be distributed, any cigarette package
 13 that contains fewer than 20 cigarettes.

14 (b) **PROHIBITION ON SAMPLING.**—No manufacturer,
 15 distributor, or retailer may distribute or cause to be dis-
 16 tributed any free samples of any tobacco product.

17 (c) **PROHIBITION ON DISTRIBUTION THROUGH SELF-**
 18 **SERVICE MODES OF SALE.**—

19 (1) **VENDING MACHINES.**—No manufacturer,
 20 distributor, or retailer may distribute or cause to be
 21 distributed any tobacco product through a vending
 22 machine.

23 (2) **OTHER DISPLAYS.**—Except as provided in
 24 subsection (d)(1)(B), no manufacturer, distributor,

1 or retailer may distribute or cause to be distributed
2 any tobacco product through a self-service display.

3 ~~(d) PERMITTED SELF-SERVICE MODES OF SALE.—~~

4 ~~(1) IN GENERAL.—~~Notwithstanding this sub-
5 title, the following methods of distributing tobacco
6 products are permitted:

7 ~~(A) Mail-order sales as provided for in~~
8 ~~paragraph (2), except that mail-order redemp-~~
9 ~~tion of coupons and the distribution of free~~
10 ~~samples through the mail shall be prohibited.~~

11 ~~(B) Self-service displays that are located in~~
12 ~~facilities where the retailer ensures that no indi-~~
13 ~~viduals under 18 years of age are present or~~
14 ~~permitted to enter at any time.~~

15 ~~(2) MAIL-ORDER SALES.—~~

16 ~~(A) IN GENERAL.—~~A manufacturer, dis-
17 tributor, or retailer may distribute or cause to
18 be distributed a tobacco product through mail-
19 order sales only if such sales are subject to a
20 procedure for verifying that no individual pur-
21 chasing such products is under 18 years of age.

22 ~~(B) REVIEW BY COMMISSIONER.—~~Not
23 later than 2 years after the date of enactment
24 of this Act, the Commissioner shall review the
25 verification procedures implemented under sub-

paragraph (A) to determine whether individuals under 18 years of age are obtaining tobacco products through the mail. If the Commissioner determines that a significant number of under-age individuals are obtaining such products through the mail, the Commissioner may promulgate regulations to ban the distribution of tobacco products through the mail.

Subtitle D—Licensing of Retail Tobacco Sellers

SEC. 131. ESTABLISHMENT OF PROGRAM.

(a) IN GENERAL.—The Commissioner, after consultation with the Secretary, shall establish a program under which an entity would be required to obtain a State or local license to sell or otherwise distribute tobacco products directly to consumers.

(b) PROHIBITION ON DISTRIBUTION.—No entity shall sell or otherwise distribute tobacco products directly to consumers unless such entity has in effect a tobacco license issued or renewed in accordance with the laws of the State in which the products are to be sold or otherwise distributed.

(c) ELIGIBILITY OF STATE FOR PAYMENTS.—To be eligible to receive a block grant under section 502, a State shall have in effect laws that meet the standards described

1 in this subtitle that provide for the licensing of entities
2 engaged in the sale or distribution of tobacco products di-
3 rectly to consumers and shall enforce such laws in accord-
4 ance with section 133.

5 **SEC. 132. REQUIREMENTS.**

6 (a) **LICENSURE AND NOTICE.**—

7 (1) **IN GENERAL.**—The State shall require that
8 each person engaged in the sale or distribution of to-
9 bacco products directly to consumers obtain a license
10 that is issued by the State. A separate license shall
11 be required for each place of business where tobacco
12 products are distributed or sold at retail.

13 (2) **NOTICE.**—The State shall notify every per-
14 son in the State who is engaged in the distribution
15 at retail of tobacco products of the license require-
16 ment of this section and of the date by which such
17 person shall have obtained a license in order to dis-
18 tribute such products.

19 (b) **FEE.**—The State may assess an annual licensing
20 fee with respect to each entity that desires to obtain a
21 license under subsection (a). Amounts derived from such
22 fees shall be used to offset the administrative costs in-
23 curred by the State in issuing and renewing licenses under
24 this subtitle.

25 (c) **APPLICATION.**—

1 (1) IN GENERAL.—An entity shall prepare and
2 submit to the State an application for a license (in-
3 cluding the renewal of a license) under this section,
4 on such form as the State may require, that shall
5 set forth the name under which the applicant trans-
6 acts or intends to transact business, the location of
7 the place of business for which the license is to be
8 issued, the street address to which all notices rel-
9 evant to the license are to be sent (in this Act re-
10 ferred to as “notice address”), and any other identi-
11 fying information that the State may require.

12 (2) ACTION BY STATE.—

13 (A) IN GENERAL.—The State shall issue or
14 renew a license or deny an application for a li-
15 cense or the renewal of a license within 30 days
16 of receiving a properly completed application
17 and the licensing fee. The State shall provide
18 notice to an applicant of an action on an appli-
19 cation denying the issuance of a license or re-
20 fusing to renew a license.

21 (B) FINDING BY STATE.—The State shall
22 deny the issuance or renewal of a license upon
23 an application if the State determines that the
24 applicant has failed to comply with the require-
25 ments of this title.

1 ~~(3) SCOPE AND RENEWAL.—~~Every license
 2 issued by the State shall be valid for a period deter-
 3 mined by the State and shall be renewed upon appli-
 4 cation except as otherwise provided in this section.

5 **SEC. 133. PENALTIES, REVOCATIONS AND SUSPENSIONS.**

6 ~~(a) PENALTIES.—~~

7 ~~(1) CRIMINAL PENALTIES APPLICABLE TO UN-~~
 8 ~~LICENSED SELLERS.—~~Any individual who sells or
 9 otherwise distributes tobacco products to a consumer
 10 without a tobacco license in effect as provided for in
 11 this subtitle shall be subject, under the applicable
 12 State law, to a fine of not less than \$1,000, or im-
 13 prisonment of not less than 6 months, or both. With
 14 respect to any corporate employer of such an indi-
 15 vidual, the corporation shall be subject to a fine of
 16 not more than \$50,000.

17 ~~(2) CIVIL PENALTIES APPLICABLE TO SELLERS~~
 18 ~~IN VIOLATION OF LICENSE.—~~

19 ~~(A) IN GENERAL.—~~In addition to any
 20 criminal penalties that may be imposed under
 21 paragraph (1), a State may, in accordance with
 22 subsection (b), impose civil penalties on any en-
 23 tity that has sold or distributed tobacco prod-
 24 ucts in the State in violation of the State to-
 25 bacco licensing laws.

1 (B) LIMITATIONS.—The civil penalties that
2 may be imposed under subparagraph (A) shall
3 not exceed the following:

4 (i) For the first offense within any 2-
5 year period, \$500, or a 3-day suspension of
6 the tobacco license, or both.

7 (ii) For a second offense within any 2-
8 year period, \$1,000, or a 7-day suspension
9 of the tobacco license, or both.

10 (iii) For a third offense within any 2-
11 year period, \$2,000, or a 30-day suspen-
12 sion of the tobacco license, or both.

13 (iv) For a fourth offense within any 2-
14 year period, \$5,000, or a 6-month suspen-
15 sion of the tobacco license, or both.

16 (v) For a fifth offense within any 2-
17 year period, \$10,000, or a 1-year suspen-
18 sion of the tobacco license, or both.

19 (vi) For a sixth and any subsequent
20 offense within any 2-year period, \$25,000,
21 or a 3-year revocation of the tobacco li-
22 cense.

23 (vii) For a tenth offense within any 2-
24 year period, the permanent revocation of
25 the tobacco license.

1 (b) REVOCATION AND SUSPENSIONS.—

2 (1) NOTICE.—Upon a finding that a tobacco li-
3 censee has been determined by a court of competent
4 jurisdiction to have violated a provision of State law
5 under this subtitle during the license term, the State
6 shall notify the licensee in writing, served personally
7 or by registered mail at the principal place of busi-
8 ness of the licensee, that any subsequent violation of
9 such law at the same place of business may result
10 in an administrative action to suspend the license
11 for a period determined by the State in accordance
12 with subsection (a)(2)(B).

13 (2) SUSPENSION.—Upon finding that a further
14 violation by the tobacco licensee has occurred involv-
15 ing the same place of business for which the license
16 was issued and the licensee has been provided notice
17 under paragraph (1), the State may initiate an ad-
18 ministrative action to suspend the license for a pe-
19 riod to be determined in accordance with subsection
20 (a)(2)(B). If an administrative action to suspend a
21 license is initiated, the State shall immediately notify
22 the licensee, in writing at the principal place of busi-
23 ness of the licensee, of the initiation of the action
24 and the reasons therefore and permit the licensee an
25 opportunity, at least 30 days after written notice is

1 served personally or by registered mail upon the li-
2 censee, to show why suspension of the license would
3 be unwarranted or unjust.

4 (3) REVOCATION.—The State may initiate an
5 administrative action to revoke a tobacco license that
6 previously has been suspended under paragraph (2)
7 if, during the 2-year period described in subsection
8 (a)(2)(B), a further violation of this subtitle is com-
9 mitted after the suspension by the licensee involving
10 the same place of business for which the license was
11 issued. If an administrative action to revoke a li-
12 cense is initiated, the State shall immediately notify
13 the licensee, in writing at the principal place of busi-
14 ness of the licensee, of the initiation of the action
15 and the reasons therefore and permit the licensee an
16 opportunity, at least 30 days after written notice is
17 served personally or by registered mail upon the li-
18 censee, to show why revocation of the license would
19 be unwarranted or unjust.

20 (c) JUDICIAL REVIEW.—A tobacco licensee may seek
21 judicial review of an action of the State suspending, revok-
22 ing, denying, or refusing to renew a license under this sec-
23 tion by filing a complaint in a court of competent jurisdic-
24 tion. A complaint shall be filed within 30 days after the

1 date on which notice of the action involved is received by
 2 the licensee. The court shall review the evidence de novo.

3 **SEC. 134. FEDERAL LICENSING OF MILITARY AND OTHER**
 4 **ENTITIES.**

5 (a) IN GENERAL.—The Commissioner, in consulta-
 6 tion with the Secretary of Defense, Secretary of State, and
 7 other appropriate Federal officials, shall establish and im-
 8 plement a Federal tobacco licensing program to be applied
 9 to entities that sell or distribute tobacco products—

10 (1) on any military installation (as defined in
 11 section 2801(c)(2) of title X, United States Code);

12 (2) in any United States embassy;

13 (3) in any facility owned and operated by the
 14 Federal Government either in the United States or
 15 in a foreign country;

16 (4) in any duty-free shop located within the
 17 United States; or

18 (5) through any other Federal entity or on any
 19 other Federal property as determined appropriate by
 20 the Commissioner.

21 (b) REQUIREMENTS OF PROGRAM.—The program es-
 22 tablished under subsection (a) shall apply requirements
 23 (including those for penalties, suspensions, and revoca-
 24 tions) similar to those required to be implemented by
 25 States under this subtitle.

1 (c) INDIAN TRIBES AND TRIBAL LANDS.—For pur-
 2 poses of applying and enforcing the provisions of this sub-
 3 title to entities that sell or otherwise distribute tobacco
 4 products on Indian reservations (as defined in section
 5 403(9) of the Indian Child Protection and Family Violence
 6 Prevention Act (25 U.S.C. 3202(9))), an Indian tribe or
 7 tribal organization (as such terms are defined in section
 8 4 of the Indian Self Determination and Education Assist-
 9 ance Act (25 U.S.C. 450b)) shall be treated as a State.

10 **Subtitle E—Regulation of Tobacco** 11 **Product Development and Man-** 12 **ufacturing**

13 **SEC. 141. REFERENCE.**

14 Whenever in this subtitle an amendment or repeal is
 15 expressed in terms of an amendment to, or repeal of, a
 16 section or other provision, the reference shall be consid-
 17 ered to be made to a section or other provision of the Fed-
 18 eral Food, Drug, and Cosmetic Act (21 U.S.C. 301 et
 19 seq.).

20 **SEC. 142. TREATMENT OF TOBACCO PRODUCTS AS DRUGS.**

21 (a) DEFINITIONS.—

22 (1) DRUG.—

23 (A) IN GENERAL.—Section 201(g)(1) (21
 24 U.S.C. 321(g)(1)) is amended by inserting be-

1 fore the first period “; and (E) tobacco prod-
 2 ucts”.

3 (B) EXCEPTION.—Section 201(p) of such
 4 Act is amended in paragraphs (1) and (2) by
 5 striking “(except a new animal drug” and in-
 6 serting “(except a tobacco product, a new ani-
 7 mal drug,”.

8 (2) DEVICES.—Section 201(h) (21 U.S.C.
 9 321(h)) is amended by adding at the end the follow-
 10 ing: “Such term includes a tobacco product which
 11 shall be classified as a class II device.”.

12 (3) OTHER DEFINITIONS.—Section 201 (21
 13 U.S.C. 321) is amended by adding at the end there-
 14 of the following new paragraphs:

15 “(ii) TOBACCO ADDITIVE.—The term ‘tobacco addi-
 16 tive’ means any substance the intended use of which re-
 17 sults or may reasonably be expected to result, directly or
 18 indirectly, in the substance becoming a component of, or
 19 otherwise affecting the characteristics of, any tobacco
 20 product, including any substance that may have been re-
 21 moved from the tobacco product and then readded in the
 22 substance’s original or modified form.

23 “(jj) TAR.—The term ‘tar’ means mainstream total
 24 articulate matter minus nicotine and water.

1 ~~“(kk) TOBACCO PRODUCT.—The term ‘tobacco prod-~~
 2 ~~uct’ has the meaning given such term in section 100(22)~~
 3 ~~of the Universal Tobacco Settlement Act.”.~~

4 ~~(b) ENFORCEMENT.—Section 301 (21 U.S.C. 331) is~~
 5 ~~amended by adding at the end thereof the following new~~
 6 ~~subsection:~~

7 ~~“(x) The manufacture, labeling, distribution, and sale~~
 8 ~~of any adulterated or misbranded tobacco product in viola-~~
 9 ~~tion of—~~

10 ~~“(1) regulations issued pursuant to section 903;~~

11 ~~“(2) title I of the Universal Tobacco Settlement~~
 12 ~~Act.”.~~

13 ~~(c) ADULTERATED OR MISBRANDED PROVISIONS.—~~

14 ~~(1) ADULTERATION.—Section 501 (21 U.S.C.~~
 15 ~~351) is amended by adding at the end the following:~~

16 ~~“(j) If it is a tobacco product and it does not comply~~
 17 ~~with the provisions of chapter IX.”.~~

18 ~~(2) MISBRANDING.—Section 502 (21 U.S.C.~~
 19 ~~352) is amended by adding at the end the following:~~

20 ~~“(u) If it is a tobacco product and its labeling does~~
 21 ~~not comply with the provisions of chapter IX and the pro-~~
 22 ~~visions of title I of the Universal Tobacco Settlement~~
 23 ~~Act.”.~~

24 ~~(d) CLASSIFICATION OF TOBACCO PRODUCTS.—Sec-~~
 25 ~~tion 512(a)(1)(B) (21 U.S.C. 360e(a)(1)(B)) is amended~~

1 by adding at the end the following: “For purposes of this
 2 Act, a tobacco product shall be classified as a class II de-
 3 vice with performance standards applicable under chapter
 4 IX.”.

5 **SEC. 143. HEALTH AND SAFETY REGULATION OF TOBACCO**
 6 **PRODUCTS.**

7 The Act (21 U.S.C. 301 et seq.) is amended—

8 (1) by redesignating chapter IX as chapter X;

9 (2) by redesignating sections 901, 902, 903,
 10 904, and 905 as sections 1001, 1002, 1003, 1004,
 11 and 1005, respectively; and

12 (3) by adding after chapter VIII the following
 13 new chapter:

14 “CHAPTER IX—TOBACCO PRODUCTS

15 “**SEC. 901. DEFINITIONS.**

16 “For purposes of this chapter and in addition to the
 17 definitions contained in section 201, the definitions under
 18 section 100 of the Universal Tobacco Settlement Act shall
 19 apply.

20 “**SEC. 902. PURPOSE.**

21 “It is the purpose of this chapter to impose a regu-
 22 latory scheme applicable to the development and manufac-
 23 turing of cigarettes and smokeless tobacco products/to-
 24 bacco products. Such scheme shall include the approval
 25 of the ingredients used in such products and the imposi-

tion of standards to reduce the level of certain constituents
contained in such products, including nicotine.

“SEC. 903. PROMULGATION OF REGULATIONS.

“The Commissioner shall promulgate regulations governing the misbranding, adulteration, and dispensing of tobacco products that are consistent with this chapter and with the manner in which other products that are ingested into the body are regulated under this Act, except that the Commissioner may not promulgate a regulation that prohibits the sale and distribution of a tobacco product solely on the basis of the fact that tobacco causes disease. Such regulations shall be promulgated not later than 6 months after the date of enactment of the Universal Tobacco Settlement Act.

“SEC. 904. MINIMUM REQUIREMENTS.

“(a) MISBRANDING.—The regulations promulgated under section 903 shall at a minimum require that a tobacco product be deemed to be misbranded if the labeling of the package of such product is not in compliance with the provisions of this chapter, of other applicable provisions of this Act, or of sections 102(a), 103, 111, 112, and 113 (as applicable to the type of product involved) of the Universal Tobacco Settlement Act.

“(b) ADULTERATION.—The regulations promulgated under section 903 shall at a minimum require that a to-

1 bacco product be deemed to be adulterated if the Commis-
 2 sioner determines that any tobacco additive in such prod-
 3 uct, regardless of the amount of such tobacco additive, ei-
 4 ther by itself or in conjunction with any other tobacco ad-
 5 ditive or ingredient significantly increases the risk to
 6 human health or the risk of addiction to such product.

7 **“SEC. 905. PERFORMANCE STANDARDS FOR TOBACCO**
 8 **PRODUCTS.**

9 “(a) IN GENERAL.—With respect to tobacco prod-
 10 ucts, the special controls required by section 513(a)(1)(B)
 11 shall include performance standards for such products as
 12 established in accordance with this section.

13 “(b) REQUIREMENTS.—A performance standard es-
 14 tablished under this section for a tobacco product—

15 “(1) shall include provisions to require the
 16 modification of the product to minimize the illness
 17 or injury that may result in consumers as a result
 18 of the use of such products, including the compo-
 19 nents of such products that produce dependence
 20 among such consumers; and

21 “(2) include, where appropriate—

22 “(A) provisions with respect to the con-
 23 struction, components, ingredients, and prop-
 24 erties of the tobacco product;

1 “(B) provisions for the testing (on a sam-
2 ple basis or, if necessary, on an individual
3 basis) of the tobacco product or, if it is deter-
4 mined that no other more practicable means are
5 available to the Secretary to assure the con-
6 formity of the device to the standard, provisions
7 for the testing (on a sample basis or, if nec-
8 essary, on an individual basis) by the Secretary
9 or by another person at the direction of the
10 Secretary;

11 “(C) provisions for the measurement of the
12 performance characteristics of the tobacco prod-
13 uct;

14 “(D) provisions requiring that the results
15 of each or of certain of the tests of the device
16 required to be made under subparagraph (B)
17 demonstrate that the tobacco product is in con-
18 formity with the portions of the standard for
19 which the test or tests were required; and

20 “(E) a provision requiring that the sale
21 and distribution of the device be restricted but
22 only to the extent that the sale and distribution
23 of a device may be otherwise restricted under
24 this Act of title I of the Universal Tobacco Set-
25 tlement Act.

1 “(c) EVALUATION.—The Secretary shall provide for
 2 the periodic evaluation of a performance standard estab-
 3 lished under this section to determine if such standards
 4 should be changed to reflect new medical, scientific, or
 5 other technological data.

6 “(d) PROCEDURES.—In carrying out this section, the
 7 Secretary shall, to the maximum extent practicable—

8 “(1) use personnel, facilities, and other tech-
 9 nical support available in other Federal agencies;

10 “(2) consult with the Scientific Advisory Com-
 11 mittee established under section 906 and other Fed-
 12 eral agencies concerned with standard-setting and
 13 other nationally or internationally recognized stand-
 14 ard-setting entities; and

15 “(3) invite appropriate participation, through
 16 joint or other conferences, workshops, or other
 17 means, by informed persons representative of sci-
 18 entific, professional, industry, or consumer organiza-
 19 tions who in the judgment of the Secretary can
 20 make a significant contribution.

21 “(e) PROCEDURES.—

22 “(1) IN GENERAL.—The Secretary shall publish
 23 in the Federal Register a notice of proposed rule-
 24 making for the establishment, amendment, or rev-

1 ocation of any performance standard under this sec-
2 tion.

3 ~~“(2) NOTICE REQUIREMENTS.—A notice of pro-~~
4 posed rulemaking for the establishment or amend-
5 ment of a performance standard under this section
6 shall—

7 ~~“(A) set forth a finding with supporting~~
8 justification that the performance standard is
9 appropriate under subsection (b)(1) with re-
10 spect to the product; and

11 ~~“(B) invite interested persons to submit an~~
12 existing performance standard for the product,
13 including a draft or proposed performance
14 standard, for consideration by the Secretary.

15 ~~“(3) COMMENT PERIOD.—The Secretary shall~~
16 provide for a comment period of not less than 60
17 days.

18 ~~“(4) APPLICABILITY OF SECTION 514.—The~~
19 provisions of paragraphs (3) and (4) of section
20 514(b) shall apply to the establishment, amendment,
21 or revocation of any performance standard under
22 this section, except that any reference to an advisory
23 committee shall be deemed to be a reference the Sci-
24 entific Advisory Committee established under section
25 906.

1 “(f) NICOTINE.—Except as provided in section 907,
 2 a performance standard established under this section
 3 may not require the elimination of nicotine from tobacco
 4 products.

5 “(g) LIMITATION.—The Commissioner may not es-
 6 tablish a performance standard under this section that has
 7 the effect of prohibiting the sale and distribution, to indi-
 8 viduals who are at least 18 years of age, of traditional
 9 tobacco products in the basic form of the particular prod-
 10 uct as described in the definition of the particular product
 11 under section 100 of the Universal Tobacco Settlement
 12 Act.

13 **“SEC. 906. SCIENTIFIC ADVISORY COMMITTEE.**

14 “(a) ESTABLISHMENT.—Not later than 1 year after
 15 the date of enactment of the Universal Tobacco Settlement
 16 Act, the Secretary shall establish an advisory committee,
 17 to be known as the ‘Scientific Advisory Committee’, to as-
 18 sist the Secretary in establishing, amending, or revoking
 19 a performance standard under section 905.

20 “(b) MEMBERSHIP.—The Secretary shall appoint as
 21 members of the Scientific Advisory Committee any individ-
 22 uals with expertise in the medical, scientific, or other tech-
 23 nological data involving the manufacture and use of to-
 24 bacco products, and of appropriately diversified profes-
 25 sional backgrounds. The Secretary may not appoint to the

1 Committee any individual who is in the regular full-time
 2 employ of the Federal Government. The Secretary shall
 3 designate one of the members of each advisory committee
 4 to serve as chairperson of the Committee. The Committee
 5 shall include as nonvoting members a representative of
 6 consumer interests and a representative of interests of the
 7 device manufacturing industry.

8 “(c) COMPENSATION AND EXPENSES.—

9 “(1) COMPENSATION.—Members of the Sci-
 10 entific Advisory Committee who are not officers or
 11 employees of the United States, while attending con-
 12 ferences or meetings of the Committee or otherwise
 13 serving at the request of the Secretary, shall be enti-
 14 tled to receive compensation at rates to be fixed by
 15 the Secretary, which rates may not exceed the daily
 16 equivalent of the rate of pay for level 4 of the Senior
 17 Executive Schedule under section 5382 of title 5,
 18 United States Code, for each day (including travel-
 19 time) they are so engaged.

20 “(2) EXPENSES.—While conducting the busi-
 21 ness of the Scientific Advisory Committee away from
 22 their homes or regular places of business, each mem-
 23 ber may be allowed travel expenses, including per
 24 diem in lieu of subsistence, as authorized by section
 25 5703 of title 5 of the United States Code for per-

1 sons in the Government service employed intermit-
 2 tently.

3 ~~“(d) DUTIES.—The Scientific Advisory Committee~~
 4 ~~shall—~~

5 ~~“(1) assist the Secretary in establishing,~~
 6 ~~amending, or revoking performance standards under~~
 7 ~~section 905;~~

8 ~~“(2) examine and determine the effects of the~~
 9 ~~alteration of the nicotine yield levels in tobacco prod-~~
 10 ~~ucts;~~

11 ~~“(3) examine and determine whether there is a~~
 12 ~~threshold level below which nicotine yields do not~~
 13 ~~produce dependence on the tobacco product involved;~~
 14 ~~and, if so, determine what that level is; and~~

15 ~~“(4) review other safety, dependence or health~~
 16 ~~issues relating to tobacco products as determined ap-~~
 17 ~~propriate by the Secretary.~~

18 **~~“SEC. 907. REQUIREMENTS RELATING TO NICOTINE AND~~**
 19 **~~OTHER CONSTITUENTS.~~**

20 ~~“(a) GENERAL RULE.—Except as provided in sub-~~
 21 ~~section (d), the Secretary, based on a finding under sub-~~
 22 ~~section (b), may adopt a performance standard under sec-~~
 23 ~~tion 905 that requires the modification of a tobacco prod-~~
 24 ~~uct in a manner that involves—~~

1 ~~“(1) the gradual reduction of nicotine yields of~~
 2 ~~the product; or~~

3 ~~“(2) the reduction or elimination of other con-~~
 4 ~~stituents or harmful components of the product.~~

5 ~~“(b) REQUIRED FINDING.—~~

6 ~~“(1) IN GENERAL.—A modification described in~~
 7 ~~subsection (a) shall not be adopted unless the Sec-~~
 8 ~~retary determines that the modification—~~

9 ~~“(A) will result in a significant reduction~~
 10 ~~in the health risks associated with the use of~~
 11 ~~the tobacco product involved;~~

12 ~~“(B) is technologically feasible; and~~

13 ~~“(C) will not result in the creation of a sig-~~
 14 ~~nificant demand for contraband products or~~
 15 ~~other tobacco products that do not meet the~~
 16 ~~performance standard that requires the modi-~~
 17 ~~fication.~~

18 ~~“(2) CONTRABAND PRODUCTS.—For purposes~~
 19 ~~of paragraph (1)(C), the Secretary, in determining~~
 20 ~~whether a significant demand for contraband prod-~~
 21 ~~ucts will be created, shall take in account—~~

22 ~~“(A) the estimated number of dependent~~
 23 ~~tobacco product users residing in the United~~
 24 ~~States on the date on which the proposed modi-~~
 25 ~~fication is being considered;~~

1 ~~“(B) the availability to such users, or lack~~
 2 ~~thereof, of alternative products; and~~

3 ~~“(C) any other factors determined appro-~~
 4 ~~priate by the Secretary.~~

5 ~~“(3) SUBSTANTIAL EVIDENCE.—A determina-~~
 6 ~~tion under paragraph (2) shall be based upon sub-~~
 7 ~~stantial evidence as demonstrated through an admin-~~
 8 ~~istrative record developed through formal rule-~~
 9 ~~making procedures as required under title 5, United~~
 10 ~~States Code. Any such determination, and any deter-~~
 11 ~~mination by the Secretary with respect to a petition~~
 12 ~~filed for an administrative review of the modifica-~~
 13 ~~tion, shall be subject to judicial review in the United~~
 14 ~~States District Court for the District of Columbia.~~

15 ~~“(e) LIMITATION.—Effective on the date that is 3~~
 16 ~~years after the date of enactment of the Universal Tobacco~~
 17 ~~Settlement Act, and notwithstanding any performance~~
 18 ~~standard established under this chapter, no cigarette or~~
 19 ~~tobacco product shall be sold or otherwise distributed in~~
 20 ~~the United States that exceeds a 12 milligram tar yield,~~
 21 ~~as determined using the testing methodology used by the~~
 22 ~~Federal Trade Commission on such date of enactment.~~

23 ~~“(d) 12-YEAR PROHIBITION.—During the 12-year~~
 24 ~~period beginning on the date of enactment of the Universal~~
 25 ~~Tobacco Settlement Act, the Secretary shall not adopt any~~

1 performance standard under section 905 that requires the
 2 complete elimination of nicotine yields in a tobacco prod-
 3 uct.

4 “(e) ACTION AFTER PROHIBITION.—

5 “(1) IN GENERAL.—After the expiration of the
 6 12-year period referred to in subsection (d), the Sec-
 7 retary may establish or amend any performance
 8 standard to completely eliminate nicotine yields in a
 9 tobacco product.

10 “(2) DETERMINATION.—Any performance
 11 standard described in paragraph (1) shall not be
 12 adopted unless the Secretary determines that the
 13 standard—

14 “(A) will result in a significant overall re-
 15 duction in the health risks associated with the
 16 use of the tobacco product involved by consum-
 17 ers, including individuals who continue to use
 18 tobacco products but use such products less
 19 often and individuals who stop using such prod-
 20 ucts;

21 “(B) is technologically feasible; and

22 “(C) will not result in the creation of a sig-
 23 nificant demand for contraband products or
 24 other tobacco products that do not meet the
 25 performance standard.

1 ~~“(3) HEALTH BENEFITS.—In making a deter-~~
2 ~~mination with respect to health risks under para-~~
3 ~~graph (2)(A), the Secretary shall consider—~~

4 ~~“(A) the number of dependent tobacco~~
5 ~~users residing in the United States on the date~~
6 ~~on which the proposed performance standard is~~
7 ~~being considered;~~

8 ~~“(B) the availability and demonstrated~~
9 ~~market acceptance of alternative products;~~

10 ~~“(C) the effectiveness of tobacco product~~
11 ~~cessation techniques and devices on the market~~
12 ~~on the date on which the proposed performance~~
13 ~~standard is being considered; and~~

14 ~~“(D) any other factors determined appro-~~
15 ~~priate by the Secretary.~~

16 ~~“(4) PREPONDERANCE OF THE EVIDENCE.—A~~
17 ~~determination under paragraph (2) with respect to~~
18 ~~the elimination of nicotine, or an action that would~~
19 ~~have an effect comparable to the elimination of nico-~~
20 ~~tine, shall be based upon a preponderance of the evi-~~
21 ~~dence as demonstrated, upon the request of a manu-~~
22 ~~facturer, through a Part 12 hearing or notice and~~
23 ~~comment rulemaking as required under title 5,~~
24 ~~United States Code. Any such determination, and~~
25 ~~any determination by the Secretary with respect to~~

1 a petition filed for an administrative review of the
 2 modification, shall be subject to judicial review in
 3 the United States District Court for the District of
 4 Columbia.

5 “(5) PHASE-IN.—A performance standard de-
 6 scribed in paragraph (1) shall be implemented dur-
 7 ing a 2-year phase-in period beginning on the date
 8 on which all administrative or judicial action pro-
 9 vided for under this chapter with respect to the
 10 standard is completed.

11 “(f) TOBACCO CONSTITUENTS.—The Secretary shall
 12 promulgate regulations for the testing, reporting and dis-
 13 closure of tobacco smoke constituents that the Secretary
 14 determines the public should be informed of to protect
 15 public health, including tar, nicotine, and carbon mon-
 16 oxide. Such regulations may require label and advertising
 17 disclosures relating to tar and nicotine.

18 **“SEC. 908. REDUCED RISK PRODUCTS.**

19 “(a) MISBRANDING.—Except as provided in sub-
 20 section (b), the regulations promulgated in accordance
 21 with section 904(a) shall require that a tobacco product
 22 be deemed to be misbranded if the labeling of the package
 23 of the product, or the claims of the manufacturer in con-
 24 nection with the product, can reasonably be interpreted
 25 by an objective consumer as stating or implying that the

1 product presents a reduced health risk as compared to
 2 other similar products.

3 ~~“(b) EXCEPTION.—~~

4 ~~“(1) IN GENERAL.—~~Subsection (a) shall not
 5 apply to the labeling of a tobacco product, or the
 6 claims of the manufacturer in connection with the
 7 product, if—

8 ~~“(A) the manufacturer, based on scientific~~
 9 ~~evidence, demonstrates to the Commissioner~~
 10 ~~that the product significantly reduces the risk~~
 11 ~~to the health of the user as compared to other~~
 12 ~~similar tobacco products; and~~

13 ~~“(B) the Commissioner approves the spe-~~
 14 ~~cific claim that will be made a part of the label-~~
 15 ~~ing of the product, or the specific claims of the~~
 16 ~~manufacturer in connection with the product.~~

17 ~~“(2) REDUCTION IN HARM.—~~The Commissioner
 18 shall promulgate regulations to permit the inclusion
 19 of scientifically-based specific health claims on the
 20 labeling of a tobacco product package, or the making
 21 of such claims by the manufacturer in connection
 22 with the product, where the Commissioner deter-
 23 mines that the inclusion or making of such claims
 24 would reduce harm to consumers and otherwise pro-
 25 mote public health.

1 ~~“(c) DEVELOPMENT OF REDUCED RISK PRODUCT~~
 2 ~~TECHNOLOGY.—~~

3 ~~“(1) NOTIFICATION OF COMMISSIONER.—The~~
 4 ~~manufacturer of a tobacco product shall provide~~
 5 ~~written notice to the Commissioner upon the devel-~~
 6 ~~opment or acquisition by the manufacturer of any~~
 7 ~~technology that would reduce the risk of such prod-~~
 8 ~~ucts to the health of the user.~~

9 ~~“(2) CONFIDENTIALITY.—The Commissioner~~
 10 ~~shall promulgate regulations to provide a manufac-~~
 11 ~~turer with appropriate confidentiality protections~~
 12 ~~with respect to technology that is the subject of a~~
 13 ~~notification under paragraph (1) that contains evi-~~
 14 ~~dence that the technology involved is in the early de-~~
 15 ~~velopmental stages.~~

16 ~~“(3) LICENSING.—~~

17 ~~“(A) IN GENERAL.—With respect to any~~
 18 ~~technology developed or acquired under para-~~
 19 ~~graph (1), the manufacturer shall permit the~~
 20 ~~use of such technology by other manufacturers~~
 21 ~~of tobacco products to which this chapter ap-~~
 22 ~~plies.~~

23 ~~“(B) FEES.—The Commissioner shall pro-~~
 24 ~~mulgate regulations to provide for the payment~~
 25 ~~of a commercially reasonable fee by each manu-~~

1 facturer that uses the technology described
 2 under subparagraph (A) to the manufacturer
 3 that submits the notice under paragraph (1) for
 4 such technology. Such regulations shall contain
 5 procedures for the resolution of fee disputes be-
 6 tween manufacturers under this subparagraph.

7 ~~“(d) REQUIREMENT OF MANUFACTURE AND MAR-~~
 8 ~~KETING.—~~

9 ~~“(1) PURPOSE.—~~It is the purpose of this sub-
 10 ~~section to provide for a mechanism to ensure that~~
 11 ~~tobacco products that are designed to be less hazard-~~
 12 ~~ous to the health of users are developed, tested, and~~
 13 ~~made available to consumers.~~

14 ~~“(2) DETERMINATION.—~~Upon a determination
 15 ~~by the Commissioner that the manufacture of a to-~~
 16 ~~bacco product that is less hazardous to the health of~~
 17 ~~users is technologically feasible, the Commissioner~~
 18 ~~may, in accordance with this subsection, require that~~
 19 ~~certain manufacturers of such products manufacture~~
 20 ~~and market such less hazardous products.~~

21 ~~“(3) MANUFACTURER.—~~

22 ~~“(A) REQUIREMENT.—~~Except as provided
 23 ~~in subparagraph (B), the requirement under~~
 24 ~~paragraph (2) shall apply to any manufacturer~~
 25 ~~that provides a notification to the Commissioner~~

1 under subsection (c)(1) concerning the tech-
 2 nology that is the subject of the determination
 3 of the Commissioner.

4 “(B) EXCEPTION.—The requirement under
 5 subparagraph (A) shall not apply to a manufac-
 6 turer if—

7 “(i) the manufacturer elects not to
 8 manufacture such products and provides
 9 notice to the Commissioner of such elec-
 10 tion; and

11 “(ii) the manufacturer agrees to pro-
 12 vide the technology involved, for a commer-
 13 cially reasonable fee, to other manufactur-
 14 ers that enter into agreements to use such
 15 technology to manufacture and market to-
 16 bacco products that are less hazardous to
 17 the health of users.

18 “(4) ACTION BY PUBLIC HEALTH SERVICE.—If
 19 no manufacturer elects or agrees to manufacture
 20 and market tobacco products that are less hazardous
 21 to the health of users through the use of technology
 22 available pursuant to this subsection within a rea-
 23 sonable period of time, as determined appropriate by
 24 the Commissioner, the Commissioner, in consultation
 25 with the Secretary and acting through the Public

1 Health Service, shall, either directly or through
 2 grants or contracts, provide for the manufacture and
 3 marketing of such products.

4 **~~“SEC. 909. GOOD MANUFACTURING PRACTICE STANDARDS.~~**

5 ~~“(a) AUTHORITY.—~~

6 ~~“(1) IN GENERAL.—The Secretary may, in ac-~~
 7 ~~cordance with paragraph (2), prescribe regulations~~
 8 ~~requiring that the methods used in, and the facilities~~
 9 ~~and controls used for, the manufacture, pre-produc-~~
 10 ~~tion design validation (including a process to assess~~
 11 ~~the performance of a tobacco product), packing, and~~
 12 ~~storage of a tobacco product conform to current~~
 13 ~~good manufacturing practice, as prescribed in such~~
 14 ~~regulations, to ensure that such products will be in~~
 15 ~~compliance with this chapter.~~

16 ~~“(2) REQUIREMENTS PRIOR TO REGULA-~~
 17 ~~TIONS.—Prior to the Secretary promulgating any~~
 18 ~~regulation under paragraph (1) the Secretary~~
 19 ~~shall—~~

20 ~~“(A) afford the Scientific Advisory Com-~~
 21 ~~mittee established under section 906 an oppor-~~
 22 ~~tunity (with a reasonable time period) to submit~~
 23 ~~recommendations with respect to the regula-~~
 24 ~~tions proposed to be promulgated; and~~

1 “(B) afford opportunity for an oral hear-
2 ing.

3 “(b) MINIMUM REQUIREMENTS.—The regulations
4 promulgated under subsection (a) shall at a minimum re-
5 quire—

6 “(1) the implementation of a quality control
7 system by the manufacturer of a tobacco product;

8 “(2) a process for the inspection of tobacco
9 product material prior to the packaging of such
10 product to be determined by the Commissioner;

11 “(3) procedures for the proper handling and
12 storage of the packaged tobacco product;

13 “(4) after consultation with the Administrator
14 of the Environmental Protection Agency, the devel-
15 opment and adherence to applicable tolerances with
16 respect to pesticide chemical residues in or on com-
17 modities used by the manufacturer in the manufac-
18 ture of the finished tobacco product;

19 “(5) the inspection of facilities by officials of
20 the Food and Drug Administration as otherwise pro-
21 vided for in this Act; and

22 “(6) record keeping and the reporting of certain
23 information.

24 “(c) PETITIONS FOR EXEMPTIONS AND
25 VARIANCES.—

1 “(1) IN GENERAL.—Any person subject to any
 2 requirement prescribed by regulations under sub-
 3 section (a) may petition the Secretary for an exemp-
 4 tion or variance from such requirement. Such a peti-
 5 tion shall be submitted to the Secretary in such form
 6 and manner as the Secretary shall prescribe and
 7 shall—

8 “(A) in the case of a petition for an ex-
 9 emption from a requirement, set forth the basis
 10 for the petitioner’s determination that compli-
 11 ance with the requirement is not required to en-
 12 sure that the device is in compliance with this
 13 chapter;

14 “(B) in the case of a petition for a vari-
 15 ance from a requirement, set forth the methods
 16 proposed to be used in, and the facilities and
 17 controls proposed to be used for, the manufac-
 18 ture, packing, and storage of the product in lieu
 19 of the methods, facilities, and controls pre-
 20 scribed by the requirement; and

21 “(C) contain such other information as the
 22 Secretary shall prescribe.

23 “(2) SCIENTIFIC ADVISORY COMMITTEE.—The
 24 Secretary may refer to the Scientific Advisory Com-
 25 mittee established under section 906 any petition

submitted under paragraph (1). The Scientific Advisory Committee shall report its recommendations to the Secretary with respect to a petition referred to it within 60 days of the date of the petition's referral. Within 60 days after—

“(A) the date the petition was submitted to the Secretary under paragraph (1); or

“(B) if the petition was referred to the Scientific Advisory Committee, the expiration of the 60-day period beginning on the date the petition was referred to such Committee; whichever occurs later, the Secretary shall by order either deny the petition or approve it.

“(3) APPROVAL OF PETITION.—

“(A) IN GENERAL.—The Secretary may approve—

“(i) a petition for an exemption for a tobacco product from a requirement if the Secretary determines that compliance with such requirement is not required to assure that the product will comply with this chapter; and

“(ii) a petition for a variance for a tobacco product from a requirement if the Secretary determines that the methods to

1 be used in, and the facilities and controls
2 to be used for, the manufacture, packing,
3 and storage of the product in lieu of the
4 methods, controls, and facilities prescribed
5 by the requirement are sufficient to ensure
6 that the product will comply with this
7 chapter.

8 “(B) CONDITIONS.—An order of the Sec-
9 retary approving a petition for a variance shall
10 prescribe such conditions respecting the meth-
11 ods used in, and the facilities and controls used
12 for, the manufacture, packing, and storage of
13 the tobacco product to be granted the variance
14 under the petition as may be necessary to en-
15 sure that the product will comply with this
16 chapter.

17 “(4) INFORMAL HEARING.—After the issuance
18 of an order under paragraph (2) respecting a peti-
19 tion, the petitioner shall have an opportunity for an
20 informal hearing on such order.

21 “(d) AGRICULTURAL PRODUCERS.—The Secretary
22 may not promulgate any regulation under this section that
23 has the effect of placing regulatory burdens on tobacco
24 producers (as such term is used for purposes of the Agri-
25 cultural Adjustment Act of 1938 (7 U.S.C. 1281 et seq.)

1 and the Agricultural Act of 1949 (7 U.S.C. 1441 et seq.))
 2 in excess of the regulatory burdens generally placed on
 3 other agricultural commodity producers.

4 **“SEC. 910. DISCLOSURE AND REPORTING OF NONTOBACCO**
 5 **INGREDIENTS.**

6 ~~“(a) ANNUAL SUBMISSION.—~~

7 ~~“(1) IN GENERAL.—~~Each manufacturer of a to-
 8 bacco product shall annually provide the Secretary
 9 with—

10 ~~“(A) a list of all ingredients, substances,~~
 11 ~~and compounds (other than tobacco, water or~~
 12 ~~reconstituted tobacco sheet made wholly from~~
 13 ~~tobacco) that are added to the tobacco (and the~~
 14 ~~paper or filter of the product if applicable) in~~
 15 ~~the manufacture of the tobacco product, for~~
 16 ~~each brand of tobacco product so manufactured;~~
 17 ~~and~~

18 ~~“(B) a description of the quantity of the~~
 19 ~~ingredients, substances, and compounds that~~
 20 ~~are listed under subparagraph (A) with respect~~
 21 ~~to each brand of tobacco product.~~

22 ~~“(2) GENERAL DISCLOSURE OF SAFETY.—~~With
 23 respect to each annual submission under paragraph
 24 (1) during the 5-year period beginning on the date
 25 of enactment of the Universal Tobacco Settlement

1 Act, the manufacturer shall, for each ingredient,
 2 substance, or compound contained on the list of the
 3 manufacturer for the year involved, disclose whether
 4 the manufacturer has determined that the ingredi-
 5 ent, substance, or compound would be exempt from
 6 public disclosure under this section.

7 “(b) SAFETY ASSESSMENTS.—

8 “(1) REQUIREMENT.—Not later than 5 years
 9 after the date of enactment of the Universal Tobacco
 10 Settlement Act, and annually thereafter, each manu-
 11 facturer shall submit to the Secretary a safety as-
 12 sessment for each ingredient, substance, or com-
 13 pound that is listed under subsection (a)(1)(A) with
 14 respect to each brand of tobacco product manufac-
 15 tured by each such manufacturer.

16 “(2) BASIS OF ASSESSMENT.—The safety as-
 17 sessment of an ingredient, substance, or compound
 18 described in paragraph (1) shall—

19 “(A) be based on the best scientific evi-
 20 dence available at the time of the submission of
 21 the assessment; and

22 “(B) result in a finding that there is a rea-
 23 sonable certainty in the minds of competent sci-
 24 entists that the ingredient, substance, or com-

1 pound is not harmful in the quantities used
2 under the intended conditions of use.

3 “(e) PROHIBITION.—

4 “(1) REGULATIONS.—Not later than 12 months
5 after the date of enactment of the Universal Tobacco
6 Settlement Act, the Secretary shall promulgate regu-
7 lations to prohibit the use of any ingredient, sub-
8 stance, or compound in the tobacco product of a
9 manufacturer—

10 “(A) if no safety assessment has been sub-
11 mitted by the manufacturer for the ingredient,
12 substance, or compound; or

13 “(B) if the Secretary disapproves of the
14 safety of the ingredient, substance, or com-
15 pound that was the subject of the assessment
16 under paragraph (2).

17 “(2) REVIEW OF ASSESSMENTS.—

18 “(A) GENERAL REVIEW.—Not later than
19 90 days after the receipt of a safety assessment
20 under subsection (b), the Secretary shall review
21 the findings contained in such assessment.

22 “(B) APPROVAL OR DISAPPROVAL.—Not
23 later than 90 days after the completion of a re-
24 view under subparagraph (A), the Secretary
25 shall approve or disapprove of the safety of the

1 ingredient, substance, or compound that was
 2 the subject of the assessment and provide notice
 3 to the manufacturer of such action.

4 “(C) INACTION BY SECRETARY.—If the
 5 Secretary fails to act with respect to an assess-
 6 ment during the 90-day period referred to in
 7 subparagraph (B), the safety of the ingredient,
 8 substance, or compound involved shall be
 9 deemed to be approved.

10 “(d) DISCLOSURE OF INGREDIENTS TO THE PUB-
 11 LIC.—

12 “(1) INITIAL DISCLOSURE.—The regulations
 13 promulgated in accordance with section 904(a) shall,
 14 at a minimum, require that, during the 5-year pe-
 15 riod beginning on the date that is 6 months after
 16 the date of enactment of the Universal Tobacco Set-
 17 tlement Act, a tobacco product be deemed to be mis-
 18 branded if the labeling of the package of such prod-
 19 uct does not disclose the ingredients of the product
 20 in accordance with the labeling provisions applicable
 21 to food ingredients under this Act.

22 “(2) DISCLOSURE OF ALL INGREDIENTS.—The
 23 regulations referred to in paragraph (1) shall, at a
 24 minimum, require that, subsequent to the 5-year pe-
 25 riod referred to in such paragraph, a tobacco prod-

1 not be deemed to be misbranded if the labeling of
2 the package of such product does not disclose all in-
3 gredients, substances, or compounds contained in
4 the product in accordance with the labeling provi-
5 sions applicable to food ingredients under this Act.

6 ~~“(3) EXCEPTION.—~~Notwithstanding paragraph
7 ~~(1),~~ the Secretary may require that any ingredient,
8 substance, or compound contained in a tobacco prod-
9 uct that is otherwise exempt from disclosure be dis-
10 closed if the Secretary determines that such ingredi-
11 ent, substance, or compound is not safe as provided
12 for in subsection (e).

13 ~~“(e) CONFIDENTIALITY.—~~Any information reported
14 to or otherwise obtained by the Secretary under this sec-
15 tion, and that is not required to be disclosed to the public
16 under subsection (d), shall be exempt from disclosure pur-
17 suant to subsection (a) of section 552 of title 5, United
18 States Code, by reason of subsection (b)(4) of such sec-
19 tion, shall be considered confidential and shall not be dis-
20 closed and may not be used by the Secretary as the basis
21 for the establishment or amendment of a performance
22 standard under section 905, except that such information
23 may be disclosed to other officers or employees concerned
24 with carrying out this Act or when relevant in any pro-
25 ceeding under this Act.

1 ~~“SEC. 911. NONAPPLICATION OF CERTAIN PROVISIONS.~~

2 ~~“Sections 502(j), 516, 518, and 520(f) shall not~~
 3 ~~apply to tobacco products to which this chapter applies.”.~~

4 **Subtitle F—Compliance Plans and**
 5 **Corporate Culture**

6 ~~SEC. 151. COMPLIANCE PLANS.~~

7 ~~(a) IN GENERAL.—Not later than 1 year after the~~
 8 ~~date of enactment of this Act, and annually thereafter,~~
 9 ~~each manufacturer of a tobacco product shall prepare and~~
 10 ~~submit to the Secretary a plan to ensure that the manu-~~
 11 ~~facturer complies with all applicable Federal, State, and~~
 12 ~~local laws with respect to the manufacture and distribu-~~
 13 ~~tion of tobacco products.~~

14 ~~(b) REQUIREMENTS.—A compliance plan submitted~~
 15 ~~under subsection (a) shall—~~

16 ~~(1) contain the assurances of the manufacturer~~
 17 ~~that tobacco products will only be manufactured and~~
 18 ~~distributed in accordance with this Act and the~~
 19 ~~amendments made by this Act;~~

20 ~~(2) identify methods to achieve the goals of—~~

21 ~~(A) reducing the access of individuals~~
 22 ~~under 18 years of age to tobacco products; and~~

23 ~~(B) reducing the incidence of the underage~~
 24 ~~consumption of tobacco products;~~

1 (3) provide for the implementation of internal
2 incentives for achieving the reductions described in
3 paragraph (2);

4 (4) provide for the implementation of internal
5 incentives for the development of tobacco products
6 with a reduced health risk;

7 (5) contain a description of the compliance pro-
8 grams implemented under section 152 and the effec-
9 tiveness of such programs; and

10 (6) contain such other information as the Sec-
11 retary may require.

12 **SEC. 152. COMPLIANCE PROGRAMS.**

13 (a) IN GENERAL.—Not later than 1 year after the
14 date of enactment of this Act, each manufacturer of a to-
15 bacco product shall establish and implement one or more
16 compliance programs designed to ensure the compliance
17 of the manufacturer with Federal, State, and local laws
18 that limit the access of individuals under 18 years of age
19 to tobacco products.

20 (b) REQUIREMENTS.—A compliance program estab-
21 lished under subsection (a) shall—

22 (1) implement standards and procedures to be
23 adhered to by employees and agents that are de-
24 signed to reduce the incidence of violations of the
25 laws described in subsection (a);

1 (2) provide for the assignment to 1 or more
2 specific corporate executives of the overall respon-
3 sibility for ensuring that the manufacturer complies
4 with the standards and procedures applicable under
5 this Act;

6 (3) ensure that due care is taken by the cor-
7 porate executives designated under paragraph (2) to
8 avoid delegating substantial discretionary authority
9 to individuals who the executives know (or should
10 have known through the exercise of due diligence)
11 have a propensity to disregard corporate policy;

12 (4) include procedures to inform all employees
13 and agents of the relevant standards and procedures
14 applicable to the manufacturer and the tobacco
15 products manufactured under this Act, including
16 procedures for the implementation of training pro-
17 grams or the dissemination of informational mate-
18 rials;

19 (5) provide for the conduct of internal audits,
20 and the establishment of hotlines and other meas-
21 ures to promote compliance with the laws described
22 in subsection (a);

23 (6) provide for the application of appropriate
24 disciplinary mechanisms and measures to employees
25 who are directly or indirectly violating the laws de-

1 scribed in subsection (a) or otherwise not complying
2 with this Act;

3 ~~(7)~~ include measures to respond appropriately
4 where violations of laws described in subsection (a)
5 are alleged to have occurred or are occurring;

6 ~~(8)~~ include the promulgation of corporate policy
7 statements that express and explain the commitment
8 of the manufacturer to—

9 ~~(A)~~ compliance with applicable Federal,
10 State, and local laws;

11 ~~(B)~~ reducing the use of tobacco products
12 by individuals who are under 18 years of age;
13 and

14 ~~(C)~~ developing tobacco products that pose
15 a reduced risk to the health of the user;

16 ~~(9)~~ provide for the designation of a specific cor-
17 porate executive to serve as the compliance officer to
18 promote efforts to fulfill the commitment of the
19 manufacturer;

20 ~~(10)~~ include provisions for compiling reports on
21 compliance with this Act and the laws described in
22 paragraph (1) and including those reports in mate-
23 rials provided to stockholders; and

24 ~~(11)~~ include any other measures determined ap-
25 propriate by the Secretary.

1 (e) **REPORTING OF NONCOMPLIANCE.**—Under the
2 compliance program of a manufacturer, the manufactur-
3 er's employees shall be encouraged to report to the compli-
4 ance officer any known or alleged violations of this Act
5 (or an amendment made by this Act), including violations
6 by distributors or retailers. The compliance officer shall
7 furnish a copy of all such reports to the Secretary for ref-
8 erence to the appropriate Federal or State enforcement
9 authority.

10 (d) **RETAIL ESTABLISHMENTS.**—As part of the com-
11 pliance program established under this section, a manu-
12 facturer shall carry out efforts to encourage and assist (in-
13 cluding retail compliance checks and financial incentives)
14 retailers of the tobacco products manufactured by the
15 manufacturer in compliance with the Federal, State, and
16 local laws described in subsection (a).

17 **SEC. 153. WHISTLEBLOWER PROTECTIONS.**

18 (a) **PROHIBITION OF REPRISALS.**—An employee of
19 any manufacturer, distributor, or retailer of a tobacco
20 product may not be discharged, demoted, or otherwise dis-
21 criminated against (with respect to compensation, terms,
22 conditions, or privileges of employment) as a reprisal for
23 disclosing to an employee of the Food and Drug Adminis-
24 tration, the Department of Justice, or any State or local
25 regulatory or enforcement authority, information relating

1 to a substantial violation of law related to this Act (or
 2 an amendment made by this Act) or a State or local law
 3 enacted to further the purposes of this Act.

4 (b) ENFORCEMENT.—Any employee or former em-
 5 ployee who believes that such employee has been dis-
 6 charged, demoted, or otherwise discriminated against in
 7 violation of subsection (a) may file a civil action in the
 8 appropriate United States district court before the end of
 9 the 2-year period beginning on the date of such discharge,
 10 demotion, or discrimination.

11 (c) REMEDIES.—If the district court determines that
 12 a violation has occurred, the court may order the manufac-
 13 turer, distributor, or retailer involved to—

14 (1) reinstate the employee to the employee's
 15 former position;

16 (2) pay compensatory damages; or

17 (3) take other appropriate actions to remedy
 18 any past discrimination.

19 (d) LIMITATION.—The protections of this section
 20 shall not apply to any employee who—

21 (1) deliberately causes or participates in the al-
 22 leged violation of law or regulation; or

23 (2) knowingly or recklessly provides substan-
 24 tially false information to the Food and Drug Ad-

1 ministration, the Department of Justice, or any
 2 State or local regulatory or enforcement authority.

3 **SEC. 154. PROVISIONS RELATING TO LOBBYING.**

4 (a) **DEFINITIONS.**—For purposes of this section, the
 5 terms “lobbying activities”, “lobbying firm”, and “lobby-
 6 ist” have the meanings given such terms by section 3 of
 7 the Lobbying Disclosure Act of 1995 (2 U.S.C. 1602).

8 (b) **GENERAL REQUIREMENT.**—A manufacturer, dis-
 9 tributor, or retailer of a tobacco product shall require that
 10 any lobbyist or lobbying firm employed or retained by the
 11 manufacturer, distributor, or retailer, or any other individ-
 12 ual who performs lobbying activities on behalf of the man-
 13 ufacturer, distributor, or retailer, as part of the employ-
 14 ment or retainer agreement refrain from supporting or op-
 15 posing any Federal or State legislation, or otherwise sup-
 16 porting or opposing any governmental action on any mat-
 17 ter without the express consent of the manufacturer, dis-
 18 tributor, or retailer.

19 (c) **ADDITIONAL AGREEMENTS.**—An individual shall
 20 not be employed or retained to perform lobbying activities
 21 on behalf of a manufacturer, distributor, or retailer of a
 22 tobacco product unless such individual enters into a signed
 23 agreement with the manufacturer, distributor, or retailer
 24 that acknowledges that the individual—

1 (1) is fully aware of, and will fully comply with,
2 all applicable laws and regulations relating to the
3 manufacture and distribution of tobacco products;

4 (2) has reviewed and will fully comply with the
5 requirements of this Act (and the amendments made
6 by this Act);

7 (3) has reviewed and will fully comply with any
8 consent decree entered into under title VI as that
9 decree applies to the manufacturer, distributor, or
10 retailer involved; and

11 (4) has reviewed and will fully comply with the
12 business conduct policies and other applicable poli-
13 cies and commitments (including those relating to
14 the prevention of underage tobacco use) of the man-
15 ufacturer, distributor, or retailer involved.

16 **SEC. 155. TERMINATION OF CERTAIN ENTITIES.**

17 (a) REQUIREMENT.—Not later than 90 days after the
18 date of enactment of this Act, manufacturers, distributors,
19 or retailers of tobacco products shall provide for the termi-
20 nation of the activities of the Tobacco Institute and the
21 Council for Tobacco Research, U.S.A. and the Institute
22 and Council shall be dissolved.

23 (b) ESTABLISHMENT OF OTHER ENTITIES.—

24 (1) AUTHORITY.—Manufacturers, distributors,
25 or retailers of tobacco products may form or partici-

1 pate in any trade organization or other industry as-
 2 sociation only in accordance with this subsection.

3 ~~(2) BOARD OF DIRECTORS.—~~A trade organiza-
 4 tion or other industry association formed or partici-
 5 pated in under this subsection shall—

6 ~~(A)~~ shall be administered by an independ-
 7 ent board of directors, of which—

8 ~~(i)~~ during the 10-year period begin-
 9 ning on the date on which the organization
 10 or association is formed or first partici-
 11 pated in under this subsection, not less
 12 than 20 percent (at least 1 member) shall
 13 be individuals who are not current or
 14 former directors, officers, or employees of
 15 an entity terminated under subsection (a)
 16 or of the members of the association or or-
 17 ganization; and

18 ~~(ii)~~ during the life of the association
 19 or organization, no member shall be a di-
 20 rector of any of the members of the asso-
 21 ciation or organization;

22 ~~(B)~~ be administered by officers who are
 23 appointed by the board of directors and who are
 24 not otherwise employed by any of the members
 25 of the association or organization; and

1 (C) be provided with legal advice by a legal
 2 adviser who is appointed by the board of direc-
 3 tors and who is not otherwise employed by any
 4 of the members of the association or organiza-
 5 tion.

6 (3) BY-LAWS.—A trade organization or other
 7 industry association formed or participated in under
 8 this subsection shall adopt by-laws that—

9 (A) prohibit meetings by members of the
 10 association or organization who are competitors
 11 in the tobacco industry except under the spon-
 12 sorship of the association or organization;

13 (B) require that every meeting of the
 14 board of directors, or a subcommittee of the
 15 board or other general committee, proceed
 16 under and strictly adhere to an agenda that is
 17 approved by the legal counsel and circulated in
 18 advance; and

19 (C) require the taking of minutes that de-
 20 scribe the substance of any meeting of the
 21 members of the association or organization and
 22 the maintenance of such minutes in the records
 23 of the association or organization for a period
 24 of 5 years following the meeting.

25 (c) DEPARTMENT OF JUSTICE.—

1 (1) OVERSIGHT.—The Attorney General and, as
 2 appropriate, State antitrust authorities shall exercise
 3 oversight authority over any association or organiza-
 4 tion to which subsection (b) applies.

5 (2) ACCESS AND INSPECTION.—During the 10-
 6 year period beginning on the date on which an asso-
 7 ciation or organization to which subsection (b) ap-
 8 plies is formed, the Attorney General and, as appro-
 9 priate State antitrust authorities shall, upon the
 10 provision of reasonable notice to the legal counsel of
 11 the association or organization, have access to—

12 (A) all books, records, meeting agenda and
 13 minutes, and other documents maintained by
 14 the association or organization; and

15 (B) the directors, officers, and employees
 16 of the association or organization for interview
 17 purposes.

18 (3) MULTI-STATE COMMITTEE.—Two or more
 19 States, acting through the attorney general of each
 20 such State, may establish a multi-State oversight
 21 committee to assist the Attorney General in exercis-
 22 ing the oversight responsibilities under this section.

23 (4) CONFIDENTIALITY.—The Attorney General
 24 shall promulgate regulations to provide that mate-

1 rials provided under paragraph (2) are protected
2 with appropriate confidentiality protections.

3 (d) ~~ANTITRUST EXEMPTIONS.~~—The provisions of the
4 Sherman Act (15 U.S.C. 1 et seq.), the Clayton Act (29
5 U.S.C. 52 et seq.), and any other Federal or State anti-
6 trust laws shall not apply to an association or organization
7 to which subsection (b) applies.

8 **SEC. 156. ENFORCEMENT.**

9 (a) ~~ASSESSMENT.~~—

10 (1) ~~IN GENERAL.~~—The Secretary may assess a
11 civil penalty against any manufacturer of a tobacco
12 product of up to \$25,000 per day of violation when-
13 ever, on the basis of any available information, the
14 Secretary finds that such manufacturer has violated
15 or is violating any requirement of this subtitle.

16 (2) ~~LIMITATION.~~—The authority of the Sec-
17 retary under this subsection shall be limited to mat-
18 ters where the total penalty sought does not exceed
19 \$200,000 and the first alleged date of violation oc-
20 curred not more than 12 months prior to the initi-
21 ation of the administrative action, except where the
22 Secretary and the Attorney General jointly deter-
23 mine that a matter involving a larger penalty
24 amount or longer period of violation is appropriate
25 for action.

1 ~~(3) JUDICIAL REVIEW.~~—Any determination by
 2 the Administrator and the Attorney General under
 3 paragraph ~~(2)~~ shall not be subject to judicial review.

4 ~~(b) PROCEDURE.~~—

5 ~~(1) IN GENERAL.~~—A civil penalty under sub-
 6 section ~~(a)~~ shall be assessed by the Secretary by an
 7 order made after an opportunity for a hearing on
 8 the record in accordance with sections 554 and 556
 9 of title 5 of the United States Code. The Secretary
 10 shall issue reasonable rules for discovery and other
 11 procedures for hearings under this paragraph. Be-
 12 fore issuing such an order, the Secretary shall give
 13 written notice to the manufacturer against whom the
 14 assessment is being made of the Secretary's proposal
 15 to issue such an order and provide such manufac-
 16 turer with an opportunity to request such a hearing
 17 on the order, within 30 days of the date the notice
 18 is received by such manufacturer.

19 ~~(2) MODIFICATIONS.~~—The Secretary may com-
 20 promise, modify, or remit, with or without condi-
 21 tions, any penalty which may be imposed under this
 22 section.

23 ~~(c) FIELD CITATION PROGRAM.~~—

24 ~~(1) IMPLEMENTATION.~~—The Secretary may
 25 provide for the implementation, after consultation

1 with the Attorney General and the States, of a field
2 citation program through regulations establishing
3 appropriate minor violations of this subtitle for
4 which field citations, assessing civil penalties not to
5 exceed \$5,000 per day of violation, may be issued by
6 officers or employees designated by the Secretary.

7 (2) HEARING.—Any manufacturer to which a
8 field citation is assessed may, within a reasonable
9 time as prescribed by the Secretary through regula-
10 tion, elect to pay the penalty assessment or to re-
11 quest a hearing on the field citation. If a request for
12 a hearing is not made within the time specified in
13 the regulation, the penalty assessment in the field ci-
14 tation shall be final. Such hearing shall not be sub-
15 ject to section 554 or 556 of title 5 of the United
16 States Code, but shall provide a reasonable oppor-
17 tunity to be heard and to present evidence.

18 (3) NO DEFENSE.—Payment of a civil penalty
19 required by a field citation under this paragraph
20 shall not be a defense to further enforcement by the
21 United States or a State to correct a violation, or to
22 assess the statutory maximum penalty pursuant to
23 other authorities in the subtitle, if the violation con-
24 tinues.

25 (d) JUDICIAL REVIEW.—

1 (1) RIGHT.—Any manufacturer against whom a
2 civil penalty is assessed under subsection (c) or to
3 which a penalty order is issued under subsection (a)
4 may seek review of such assessment in the United
5 States District Court for the District of Columbia or
6 for the district in which the violation is alleged to
7 have occurred or in which the principal place of
8 business of the manufacturer is located, by filing in
9 such court within 30 days following the date the
10 penalty order becomes final under subsection para-
11 graph (b), the assessment becomes final under sub-
12 section (c), or a final decision following a hearing
13 under subsection (c) is rendered, and by simulta-
14 neously sending a copy of the filing by certified mail
15 to the Secretary and the Attorney General.

16 (2) FILING.—Within 30 days after a filing
17 under paragraph (1), the Secretary shall file in the
18 court involved a certified copy, or certified index, as
19 appropriate, of the record on which the penalty
20 order or assessment was issued.

21 (3) ACTION BY COURT.—A court shall not set
22 aside or remand a penalty order or assessment
23 under this section unless there is not substantial evi-
24 dence in the record, taken as a whole, to support the

1 finding of a violation or unless the order or penalty
 2 assessment constitutes an abuse of discretion.

3 (4) LIMITATION.—A penalty order or assess-
 4 ment under this section shall not be subject to re-
 5 view by any court except as provided in this sub-
 6 section. In any such proceedings, the United States
 7 may seek to recover civil penalties ordered or as-
 8 sessed under this section.

9 (c) FAILURE TO PAY.—

10 (1) IN GENERAL.—If any manufacturer fails to
 11 pay an assessment of a civil penalty or fails to com-
 12 ply with an penalty order under this section—

13 (A) after the order or assessment has be-
 14 come final; or

15 (B) after a court, in an action brought
 16 under subsection (d), has entered a final judg-
 17 ment in favor of the Secretary;

18 the Secretary shall request the Attorney General to
 19 bring a civil action in an appropriate district court
 20 to enforce the order or to recover the amount or-
 21 dered or assessed (plus interest at rates established
 22 pursuant to section 6621(a)(2) of the Internal Reve-
 23 nue Code of 1986 from the date of the final order
 24 or decision or the date of the final judgment, as the
 25 case may be). In such an action, the validity,

1 amount, and appropriateness of such order or as-
 2 sessment shall not be subject to review.

3 ~~(2) ENFORCEMENT EXPENSES.—Any manufac-~~
 4 ~~turer who fails to pay on a timely basis a civil pen-~~
 5 ~~alty ordered or assessed under this section shall be~~
 6 ~~required to pay, in addition to such penalty and in-~~
 7 ~~terest, the United States enforcement expenses, in-~~
 8 ~~cluding attorneys fees and costs incurred by the~~
 9 ~~United States for collection proceedings and a quar-~~
 10 ~~terly nonpayment penalty for each quarter during~~
 11 ~~which such failure to pay persists. Such nonpayment~~
 12 ~~penalty shall be 10 percent of the aggregate amount~~
 13 ~~of such manufacturer's outstanding penalties and~~
 14 ~~nonpayment penalties accrued as of the beginning of~~
 15 ~~such quarter.~~

16 ~~(f) SCARLET LETTER ADVERTISING.—~~

17 **TITLE II—REDUCTION IN** 18 **UNDERAGE TOBACCO USE**

19 **SEC. 201. PURPOSE.**

20 It is the purpose of this title to encourage the achieve-
 21 ment of dramatic and immediate reductions in the number
 22 of underage consumers of tobacco products through the
 23 imposition of substantial financial surcharges on manufac-
 24 turers if certain underage tobacco-use reduction targets
 25 are not met.

1 **SEC. 202. DETERMINATION OF UNDERAGE USE BASE PER-**
2 **CENTAGES.**

3 (a) **CIGARETTES.**—For purposes of this section, the
4 underage use base percentage for cigarettes shall be a per-
5 centage determined by the Secretary, weighted by the rel-
6 ative population of the age groups involved as determined
7 using data compiled in 1995 by the Bureau of the Census,
8 based on—

9 (1) the average of the percentages of 12th grad-
10 ers (individuals who are 16 or 17 years of age) who
11 used cigarette products on a daily basis for each of
12 the calendar years 1986 through 1996;

13 (2) the average of the percentages of 10th grad-
14 ers (individuals who are 14 or 15 years of age) who
15 used cigarette products on a daily basis for each of
16 the calendar years 1991 through 1996; and

17 (3) the average of the percentages of 8th grad-
18 ers (individuals who are 13 years of age) who used
19 cigarette products on a daily basis for each of the
20 calendar years 1991 through 1996.

21 (b) **SMOKELESS TOBACCO.**—For purposes of this sec-
22 tion, the underage use base percentage for smokeless to-
23 bacco products shall be a percentage determined by the
24 Secretary, weighted by the relative population of the age
25 groups involved as determined using data compiled in
26 1995 by the Bureau of the Census, based on—

1 (1) the average of the percentages of 12th grad-
 2 ers (individuals who are 16 or 17 years of age) who
 3 used smokeless tobacco products on a daily basis in
 4 1996;

5 (2) the average of the percentages of 10th grad-
 6 ers (individuals who are 14 or 15 years of age) who
 7 used smokeless tobacco products on a daily basis in
 8 1996; and

9 (3) the average of the percentages of 8th grad-
 10 ers (individuals who are 13 years of age) who used
 11 smokeless tobacco products on a daily basis in 1996.

12 (c) ~~USE OF CERTAIN DATA OR METHODOLOGY.~~—For
 13 purposes of determining the percentages under para-
 14 graphs (1) through (3) of subsections (a) and (b), the Sec-
 15 retary shall use the data contained in the National High
 16 School Drug Use Survey entitled *Monitoring the Future*
 17 by the University of Michigan or such other comparable
 18 index, as determined appropriate by the Secretary after
 19 notice and an opportunity for a hearing, that utilizes
 20 methodology identical to that used by the University of
 21 Michigan in such survey.

22 **SEC. 203. ANNUAL DAILY INCIDENCE OF UNDERAGE USE OF**
 23 **TOBACCO PRODUCTS.**

24 (a) ~~ANNUAL DETERMINATION.~~—Not later than the
 25 expiration of the 5-year period beginning on the date of

1 enactment of this Act, and annually thereafter, the Sec-
 2 retary shall determine the average annual incidence of the
 3 daily use of tobacco products by individuals who are under
 4 18 years of age.

5 (b) CIGARETTES.—With respect to cigarette prod-
 6 ucts, a determination under subsection (a) for a year shall
 7 be based on the percentage, as weighted by the relative
 8 population of the age groups involved as determined using
 9 data compiled in 1995 by the Bureau of the Census, of—

10 (1) 12th graders (individuals who are 16 or 17
 11 years of age) who used cigarette products on a daily
 12 basis during the year involved;

13 (2) 10th graders (individuals who are 14 or 15
 14 years of age) who used cigarette products on a daily
 15 basis during the year involved; and

16 (3) 8th graders (individuals who are 13 years
 17 of age) who used cigarette products on a daily basis
 18 during the year involved.

19 (c) SMOKELESS TOBACCO.—With respect to smoke-
 20 less tobacco products, a determination under subsection
 21 (a) for a year shall be based on the percentage, as weight-
 22 ed by the relative population of the age groups involved
 23 as determined using data compiled in 1995 by the Bureau
 24 of the Census, of—

1 (1) 12th graders (individuals who are 16 or 17
2 years of age) who used smokeless tobacco products
3 on a daily basis during the year involved;

4 (2) 10th graders (individuals who are 14 or 15
5 years of age) who used smokeless tobacco products
6 on a daily basis during the year involved; and

7 (3) 8th graders (individuals who are 13 years
8 of age) who used cigarette smokeless tobacco on a
9 daily basis during the year involved.

10 (d) USE OF CERTAIN DATA OR METHODOLOGY.—

11 (1) IN GENERAL.—For purposes of determining
12 the percentages under paragraphs (1) through (3) of
13 subsections (b) and (c), the Secretary shall use the
14 data contained in the National High School Drug
15 Use Survey entitled *Monitoring the Future* by the
16 University of Michigan (if such survey is still being
17 undertaken) or such other comparable index, as de-
18 termined appropriate by the Secretary after notice
19 and an opportunity for a hearing, that utilizes meth-
20 odology identical to that used by the University of
21 Michigan in such survey.

22 (2) ALTERATION OF METHODOLOGY.—If the
23 Secretary determines that the methodology used by
24 the University of Michigan in the survey referred to
25 in paragraph (1) has been altered in a material

1 manner from the methodology used during the period
 2 from 1986 to 1996 (including by altering States or
 3 regions on which the survey is based), the Secretary,
 4 after notice and an opportunity for a hearing, shall
 5 use percentages based on an index developed by the
 6 Secretary that utilizes methodology identical to that
 7 used by the University of Michigan in such survey.

8 **SEC. 204. REQUIRED REDUCTION IN UNDERAGE TOBACCO**
 9 **USE.**

10 (a) IN GENERAL.—For purposes of assessing sur-
 11 charges under section 205, the Secretary shall determine
 12 whether the required percentage reduction in the underage
 13 use of tobacco products for a year (based on the tables
 14 contained in subsection (b)) has been achieved for the year
 15 involved. Such determination shall be based on—

16 (1) with respect to cigarette products, the aver-
 17 age annual incidence of the daily use of tobacco
 18 products by individuals who are under 18 years of
 19 age for the year involved (as determined under sec-
 20 tion 203(b)) as compared to the underage use base
 21 percentage for cigarette products (as determined
 22 under section 202(a)); and

23 (2) with respect to smokeless tobacco products,
 24 the average annual incidence of the daily use of
 25 smokeless tobacco products by individuals who are

1 under 18 years of age for the year involved (as de-
 2 termined under section 203(c)) as compared to the
 3 underage use base percentage for smokeless tobacco
 4 products (as determined under section 202(b)).

5 (b) PERCENTAGE REDUCTION IN UNDERAGE USE OF
 6 TOBACCO PRODUCTS.—For purposes of subsection (a),
 7 the required percentage reduction in the underage use of
 8 tobacco products with respect to each tobacco product
 9 shall be determined according to the following tables:

10 (1) CIGARETTES.—

“Calendar year after enact- ment—	The percentage decrease in the use of cigarette products—
Fifth	30
Sixth	30
Seventh	50
Eighth	50
Ninth	50
Tenth and thereafter	60

11 (2) SMOKELESS TOBACCO PRODUCTS.—

“Calendar year after enact- ment—	The percentage decrease in the use of smokeless tobacco products—
Fifth	25
Sixth	25
Seventh	35
Eighth	35
Ninth	35
Tenth and thereafter	45

12 **SEC. 205. APPLICATION OF SURCHARGES.**

13 (a) IN GENERAL.—If the Secretary determines that
 14 the percentage reduction in the underage use of tobacco
 15 products for a year has not been achieved as required
 16 under section 204, the Secretary shall impose a surcharge
 17 on the manufacturers of the tobacco products involved.

1 (b) AMOUNT OF SURCHARGE.—

2 (1) IN GENERAL.—The amount of any sur-
3 charge to be imposed under this section for a cal-
4 endar year shall be equal to the product of—

5 (A) \$80,000,000; and

6 (B) the number of applicable surcharge
7 percentage points as determined under sub-
8 section (c).

9 (2) ADJUSTMENTS.—The amount applicable
10 under paragraph (1) shall be annually adjusted by
11 the Secretary based on—

12 (A) with respect to subparagraph (A) of
13 such paragraph—

14 (i) the proportional percentage in-
15 crease or decrease, as compared to cal-
16 endar year 1995, in the population of indi-
17 viduals residing in the United States who
18 are at least 13 years of age but less than
19 18 years of age;

20 (ii) the proportional percentage in-
21 crease or decrease, as compared to cal-
22 endar year 1996, in the average profit per
23 unit (measured in cents and weighted by
24 annual sales) earned by tobacco manufac-
25 turers for the tobacco product involved (as

determined by the Secretary through a contract with a nationally recognized accounting firm having no connection to tobacco manufacturers); and

(B) any methodology utilized to avoid the double counting of underage individuals whose tobacco use has previously resulted in the imposition of a surcharge, limited to the extent that there were not other underage users of tobacco in such previous years for whom a surcharge was not paid because of the limitation contained in section 206.

~~(3) PROFIT PER UNIT.—~~For purposes of paragraph ~~(2)(A)(ii)~~, the average profit per unit for calendar 1996 shall be determined using the operating profit reported by manufacturers to the Securities and Exchange Commission.

~~(c) DETERMINATION OF APPLICABLE SURCHARGE PERCENTAGE POINTS.—~~

~~(1) IN GENERAL.—~~Except as provided in paragraph ~~(2)~~, with respect to a calendar year, the applicable surcharge percentage points shall be equal to the percentage point difference between—

~~(A) the required percentage reduction in the underage use of the tobacco product in~~

1 involved for the year (based on the tables in sec-
2 tion 204(b)); and

3 ~~(B) the number of percentage points by~~
4 ~~which the average annual incidence of the daily~~
5 ~~use of the tobacco products involved by individ-~~
6 ~~uals who are under 18 years of age for the year~~
7 ~~(as determined under section 203) is less than~~
8 ~~the underage use base percentage for such~~
9 ~~products (as determined under section 202).~~

10 ~~(2) ADJUSTMENT.—~~If for any calendar year the
11 Secretary determines that the average annual inci-
12 dence of the daily use of the tobacco products in-
13 volved by individuals who are under 18 years of age
14 (as determined under section 203) is greater than
15 the underage use base percentage for such products
16 (as determined under section 202), the applicable
17 surcharge percentage point shall be equal to—

18 ~~(A) the percentage point amount deter-~~
19 ~~mined under paragraph (1)(A); and~~

20 ~~(B) the number of percentage points by~~
21 ~~which the average annual incidence of the daily~~
22 ~~use of the tobacco products involved by individ-~~
23 ~~uals who are under 18 years of age (as deter-~~
24 ~~mined under section 203) is greater than the~~

1 underage use base percentage for such products
2 (as determined under section 202).

3 ~~(3) TYPE OF PRODUCT.~~—Separate determina-
4 tions shall be made under this section for cigarette
5 products and smokeless tobacco products.

6 ~~(d) LIMITATION.~~—The total amount of surcharges
7 imposed with respect to each type of tobacco product (cig-
8 arette products or smokeless tobacco products) under this
9 section shall not exceed \$2,000,000,000 (adjusted each
10 year by the Secretary to account for inflation) for any cal-
11 endar year.

12 ~~(e) JOINT AND SEVERAL OBLIGATION.~~—Any sur-
13 charge imposed under this section with respect to a to-
14 bacco product (cigarette products or smokeless tobacco
15 products) shall be the joint and several obligation of all
16 manufacturers of such product as allocated by the market
17 share of each such manufacturer with respect to such
18 product. The market share of each manufacturer for each
19 such product shall be based on the actual Federal excise
20 tax payments made by such manufacturers for each such
21 product under the Internal Revenue Code of 1986.

22 ~~(f) ASSESSMENT.~~—Not later than May 1 of each year
23 in which a surcharge will be imposed under this section,
24 the Secretary shall assess to each manufacturer the
25 amount for which such manufacturer is obligated. Not

1 later than July 1 of any year in which a manufacturer
 2 receives an assessment under this section, the manufac-
 3 turer shall pay such assessment in full or be subject to
 4 such interest on such amount as the Secretary may by
 5 regulation prescribe.

6 (g) ~~USE OF AMOUNTS.~~—Amounts received under this
 7 section shall be used as provided for in section 517.

8 (h) ~~PROHIBITION.~~—No stay or other injunctive relief
 9 may be granted by the Secretary or any court that has
 10 the effect of enjoining the imposition and collection of the
 11 surcharges to be applied under this section.

12 **~~SEC. 206. ABATEMENT PROCEDURES.~~**

13 (a) ~~PETITIONS.~~—Upon payment by a manufacturer
 14 of the amount assessed to the manufacturer under section
 15 205(f), the manufacturer may submit a petition to the
 16 Secretary for an abatement of the assessment. A notice
 17 of such abatement petition shall be submitted to the attor-
 18 ney general of each State.

19 (b) ~~HEARING.~~—The Secretary shall provide for the
 20 conduct of a hearing on an abatement petition received
 21 under subsection (a) pursuant to the procedures described
 22 in sections 554, 556, and 557 of title 5, United States
 23 Code. The attorney general of any State shall be permitted
 24 to be heard at any hearing conducted under this sub-
 25 section.

1 (c) BURDEN.—The burden at any hearing under sub-
2 section (b) shall be on the manufacturer to prove, by a
3 preponderance of the evidence, that the manufacturer
4 should be granted the abatement.

5 (d) BASIS OF DECISION.—Any decision regarding a
6 petition for an abatement under this section shall be based
7 on a determination as to whether—

8 (1) the manufacturer has acted in good faith
9 and in full compliance with this Act (and any
10 amendment made by this Act) and any regulations
11 or State or local laws promulgated in furtherance of
12 this Act;

13 (2) the manufacturer has pursued all reason-
14 ably available measures to attain the reductions;

15 (3) there is any evidence of any direct or indi-
16 rect action by the manufacturer to undermine the
17 achievement of the reductions required under section
18 204 or to undermine any other provision of this Act
19 (or amendment); and

20 (4) the manufacturer has taken (or failed to
21 take) any other action as determined appropriate by
22 the Secretary.

23 (e) AMOUNT.—Upon a determination granting an
24 abatement under this section, the Secretary shall order the
25 abatement of not to exceed 75 percent of the amount paid

1 by the manufacturer, together with interest that may have
 2 accrued on such amount during the period between the
 3 date on which payment by the manufacturer was made
 4 and the date on which the abatement order was granted.
 5 Such interest shall be equal to that provided for the aver-
 6 age 52-week Treasury Bill during the period involved.

7 (f) AGGRIEVED PARTIES.—Any manufacturer or at-
 8 torney general of any State that is aggrieved by an abate-
 9 ment that is granted under this section may seek judicial
 10 review of the abatement decision within 30 days of the
 11 date of such decision in the Court of Appeals for the Dis-
 12 trict of Columbia Circuit. Review in such cases shall be
 13 subject to the procedures described in sections 701
 14 through 706 of title 5, United States Code.

15 (g) PROHIBITION.—A manufacturer may not file a
 16 petition under subsection (a) until such time as the manu-
 17 facturer has fully paid the Secretary the amount assessed
 18 to the manufacturer under section 205(f).

19 **TITLE III—STANDARDS TO RE-** 20 **DUCE INVOLUNTARY EXPO-** 21 **SURE TO TOBACCO SMOKE**

22 **SEC. 301. DEFINITIONS.**

23 In this title—

1 (1) ADMINISTRATOR.—The term “Adminis-
 2 trator” means the Administrator of the Occupational
 3 Safety and Health Administration.

4 (2) PUBLIC FACILITY.—

5 (A) IN GENERAL.—The term “public facil-
 6 ity” means any building regularly entered by 10
 7 or more individuals at least 1 day per week, in-
 8 cluding any such building owned by or leased to
 9 a Federal, State, or local government entity.
 10 Such term shall not include any building or
 11 portion thereof regularly used for residential
 12 purposes.

13 (B) EXCLUSIONS.—Such term does not in-
 14 clude a building which is used as a restaurant
 15 (other than a fast food restaurant), bar, private
 16 club, hotel guest room, casino, bingo parlor, to-
 17 bacco merchant, or prison.

18 (C) FAST FOOD RESTAURANT.—The term
 19 “fast food restaurant” means any restaurant or
 20 chain of restaurants that primarily distributes
 21 food through a customer pick-up (either at a
 22 counter or drive-through window). The Admin-
 23 istrator of the Occupational Safety and Health
 24 Administration may promulgate regulations to
 25 clarify this subparagraph to ensure that the in-

1 tended inclusion of establishments catering
 2 largely to individuals under 18 years of age is
 3 achieved.

4 ~~(3) RESPONSIBLE ENTITY.~~—The term “respon-
 5 sible entity” means, with respect to any public facil-
 6 ity, the owner of such facility except that, in the
 7 case of any such facility or portion thereof which is
 8 leased, such term means the lessee.

9 **SEC. 302. SMOKE-FREE ENVIRONMENT POLICY.**

10 ~~(a) POLICY REQUIRED.~~—In order to protect children
 11 and adults from cancer, respiratory disease, heart disease,
 12 and other adverse health effects from breathing environ-
 13 mental tobacco smoke, the responsible entity for each pub-
 14 lic facility shall adopt and implement at such facility a
 15 smoke-free environment policy which meets the require-
 16 ments of subsection (b).

17 ~~(b) ELEMENTS OF POLICY.~~—

18 ~~(1) IN GENERAL.~~—Each smoke-free environ-
 19 ment policy for a public facility shall—

20 ~~(A)~~ prohibit the smoking of cigarettes, ei-
 21 gars, and pipes, and any other combustion of
 22 tobacco within the facility and on facility prop-
 23 erty within the immediate vicinity of the en-
 24 trance to the facility; and

1 ~~(B)~~ post a clear and prominent notice of
2 the smoking prohibition in appropriate and visi-
3 ble locations at the public facility.

4 ~~(2) EXCEPTION.—~~The smoke-free environment
5 policy for a public facility may provide an exception
6 to the prohibition specified in paragraph ~~(1)~~ for 1 or
7 more specially designated smoking areas within a
8 public facility if such area or areas meet the require-
9 ments of subsection ~~(c)~~.

10 ~~(c) SPECIALLY DESIGNATED SMOKING AREAS.—~~A
11 specially designated smoking area meets the requirements
12 of this subsection if—

13 ~~(1)~~ the area is ventilated in accordance with
14 specifications promulgated by the Administrator that
15 ensure that air from the area is directly exhausted
16 to the outside and does not recirculate or drift to
17 other areas within the public facility;

18 ~~(2)~~ the area is maintained at negative pressure,
19 as compared to adjoined nonsmoking areas, as deter-
20 mined under regulations promulgated by the Admin-
21 istrator; and

22 ~~(3)~~ nonsmoking individuals do not have to enter
23 the area for any purpose while smoking is occurring
24 in such area.

1 Cleaning and maintenance work shall be conducted in such
2 area only while no smoking is occurring in the area.

3 **SEC. 303. CITIZEN ACTIONS.**

4 (a) **IN GENERAL.**—An action may be brought to en-
5 force the requirements of this title by any aggrieved per-
6 son, any State or local government agency, or the Admin-
7 istrator.

8 (b) **VENUE.**—Any action to enforce this title may be
9 brought in any United States district court for the district
10 in which the defendant resides or is doing business to en-
11 join any violation of this title or to impose a civil penalty
12 for any such violation in the amount of not more than
13 \$5,000 per day of violation. The district courts shall have
14 jurisdiction, without regard to the amount in controversy
15 or the citizenship of the parties, to enforce this title and
16 to impose civil penalties under this title.

17 (c) **NOTICE.**—An aggrieved person shall give any al-
18 leged violator notice of at least 60 days prior to commene-
19 ing an action under this section. No action may be com-
20 menced by an aggrieved person under this section if such
21 alleged violator complies with the requirements of this title
22 within such 60-day period and thereafter.

23 (d) **COSTS.**—The court, in issuing any final order in
24 any action brought pursuant to this section, may award
25 costs of litigation (including reasonable attorney and ex-

1 pert witness fees) to any prevailing plaintiff, whenever the
 2 court determines such award is appropriate.

3 (c) **PENALTIES.**—The court, in any action under this
 4 section to apply civil penalties, shall have discretion to
 5 order that such civil penalties be used for projects which
 6 further the policies of this title. The court shall obtain the
 7 view of the Administrator in exercising such discretion and
 8 selecting any such projects.

9 **SEC. 304. PREEMPTION.**

10 Nothing in this title shall preempt or otherwise affect
 11 any other Federal, State or local law which provides pro-
 12 tection from health hazards from environmental tobacco
 13 smoke.

14 **SEC. 305. REGULATIONS.**

15 The Administrator is authorized to promulgate such
 16 regulations as the Administrator deems necessary to carry
 17 out this title.

18 **SEC. 306. EFFECTIVE DATE.**

19 The provisions of this title shall take effect on the
 20 date that is 1 year after the date of enactment of this
 21 Act.

22 **TITLE IV—NATIONAL TOBACCO**
 23 **SETTLEMENT TRUST FUND**

24 **SEC. 401. ESTABLISHMENT OF TRUST FUND.**

25 (a) **CREATION.**—

1 ~~(1) IN GENERAL.~~—There is established in the
 2 Treasury of the United States a trust fund to be
 3 known as the “National Tobacco Settlement Trust
 4 Fund”, consisting of such amounts as may be appro-
 5 priated or credited to the Trust Fund.

6 ~~(2) TRUSTEES.~~—The trustees of the Trust
 7 Fund shall be the Commissioner and the Secretary.

8 ~~(b) TRANSFERS.~~—There are hereby appropriated and
 9 transferred to the Trust Fund—

10 ~~(1)~~ amounts repaid or recovered under section
 11 205, including interest thereon;

12 ~~(2)~~ amounts equivalent to amounts received
 13 under section 402; and

14 ~~(3)~~ amounts paid as fines or penalties, includ-
 15 ing interest thereon, under section 403.

16 ~~(c) REPAYABLE ADVANCES.~~—

17 ~~(1) AUTHORIZATION.~~—There are authorized to
 18 be appropriated to the Trust Fund, as repayable ad-
 19 vances, such sums as may from time to time be nec-
 20 essary to make the expenditures described in sub-
 21 section ~~(d)~~.

22 ~~(2) REPAYMENT WITH INTEREST.~~—Repayable
 23 advances made to the Trust Fund shall be repaid,
 24 and interest on such advances shall be paid, to the
 25 general fund of the Treasury when the Secretary of

1 the Treasury determined that moneys are available
 2 in the Trust Fund for such purposes.

3 ~~(3)~~ RATE OF INTEREST.—Interest on advances
 4 made pursuant to this subsection shall be at a rate
 5 determined by the Secretary of the Treasury (as of
 6 the close of the calendar month proceeding the
 7 month in which the advance is made) to be equal to
 8 the current average market yield on outstanding
 9 marketable obligations of the United States with re-
 10 maining period to maturity comparable to the antici-
 11 pated period during which the advance will be out-
 12 standing.

13 ~~(d)~~ EXPENDITURES FROM TRUST FUND.—Amounts
 14 in the Trust Fund shall be available in each calendar year,
 15 as provided by appropriations Act, as follows:

16 (1) With respect to—

17 (A) the first and second years following the
 18 establishment of the Trust Fund, not less than
 19 \$2,500,000,000 each year;

20 (B) the third year following the establish-
 21 ment of the Trust Fund, not less than
 22 \$3,500,000,000;

23 (C) the fourth year following the establish-
 24 ment of the Trust Fund, not less than
 25 \$4,000,000,000;

1 (D) the fifth year following the establish-
 2 ment of the Trust Fund, not less than
 3 \$5,000,000,000; and

4 (E) the sixth year following the establish-
 5 ment of the Trust Fund, and each year there-
 6 after, not less than \$2,500,000,000;

7 of the amounts available in the Trust Fund shall be
 8 made available to the Secretary to makes grants to
 9 States to carry out subtitle A of title V.

10 (2) With respect to each of the first 4 years fol-
 11 lowing the establishment of the Trust Fund, not less
 12 than \$1,000,000,000, and with respect to each year
 13 thereafter, not less than \$1,500,000,000, of the
 14 amounts available in the Trust Fund shall be made
 15 available to the Secretary to carry out the National
 16 Smoking Cessation Program under section 511.

17 (3) With respect to each of the first 3 years fol-
 18 lowing the establishment of the Trust Fund, not less
 19 than \$125,000,000, and with respect to each year
 20 thereafter, not less than \$225,000,000, of the
 21 amounts available in the Trust Fund shall be made
 22 available to the Secretary to carry out the National
 23 Reduction in Tobacco Usage Program under section
 24 512.

1 (4) Not less than \$500,000,000 of the amounts
2 available in the Trust Fund each year shall be made
3 available to the Tobacco-Free Education Board to
4 carry out activities under section 513.

5 (5) With respect to each of the first 10 years
6 following the establishment of the Trust Fund, not
7 less than \$75,000,000 of the amounts available in
8 the Trust Fund shall be made available to the Sec-
9 retary to carry out the National Event Sponsorship
10 Program under section 514.

11 (6) With respect to each of the first 2 years fol-
12 lowing the establishment of the Trust Fund, not less
13 than \$75,000,000, with respect to the third such
14 year, not less than \$100,000,000, and with respect
15 to each year thereafter, not less than \$125,000,000,
16 of the amounts available in the Trust Fund shall be
17 made available to the Secretary to carry out the Na-
18 tional Community Action Program under section
19 515.

20 (7) Not less than \$100,000,000 of the amounts
21 available in the Trust Fund each year shall be made
22 available to the Secretary to carry out the National
23 Cessation Research Program under section 516.

24 (8) Not less than \$300,000,000 of the amounts
25 available in the Trust Fund each year shall be made

1 available to the Commissioner as reimbursement for
 2 the costs incurred by the Food and Drug Adminis-
 3 tration in implementing and enforcing requirements
 4 relating to tobacco products.

5 (9) Not less than the amount collected under
 6 section 205 and available each year shall be made
 7 available to the Secretary for use as provided for in
 8 section 517.

9 **SEC. 402. LIABILITY OF INDUSTRY SOURCES.**

10 (a) DEFINITION.—As used in this subtitle, the term
 11 “industry sources” means all entities which are signatories
 12 to the National Tobacco Control Protocol under section
 13 612.

14 (b) PAYMENTS.—

15 (1) INITIAL PAYMENT.—Each industry source
 16 shall pay to the Trust Fund on the date of enact-
 17 ment of this Act, an amount that bears the same
 18 ratio to \$10,000,000,000 as the relevant domestic
 19 tobacco product unit sales volume of the industry
 20 source (as defined in paragraph (3)) bears to the
 21 relevant domestic tobacco product unit volume of all
 22 industry sources for 1996.

23 (2) ANNUAL PAYMENTS.—Each industry source
 24 shall pay to the Trust Fund for each calendar year,
 25 beginning on December 31 of the year following the

1 year in which this Act is enacted, and each Decem-
2 ber 31 thereafter, an annual payment equal to—

3 (A) with respect to the first year for which
4 payments are to be made, an amount that bears
5 the same ratio to \$8,500,000,000 as the rel-
6 evant domestic tobacco product unit sales vol-
7 ume of the industry source (as defined in para-
8 graph (3)) for the year involved bears to the
9 relevant domestic tobacco product unit sales
10 volume of all industry sources for such year;

11 (B) with respect to the second year for
12 which payments are to be made, an amount
13 that bears the same ratio to \$9,500,000,000 as
14 the relevant domestic tobacco product unit sales
15 volume of the industry source (as defined in
16 paragraph (3)) for the year involved bears to
17 the relevant domestic tobacco product unit sales
18 volume of all industry sources for such year;

19 (C) with respect to the third year for
20 which payments are to be made, an amount
21 that bears the same ratio to \$11,500,000,000
22 as the relevant domestic tobacco product unit
23 sales volume of the industry source (as defined
24 in paragraph (3)) for the year involved bears to

the relevant domestic tobacco product unit sales volume of all industry sources for such year;

(D) with respect to the fourth year for which payments are to be made, an amount that bears the same ratio to \$14,000,000,000 as the relevant domestic tobacco product unit sales volume of the industry source (as defined in paragraph (3)) for the year involved bears to the relevant domestic tobacco product unit sales volume of all industry sources for such year; and

(E) with respect to each of the fifth through 25th years for which payments are to be made, an amount that bears the same ratio to \$15,000,000,000 as the relevant domestic tobacco product unit sales volume of the industry source (as defined in paragraph (3)) for the year involved bears to the relevant domestic tobacco product unit sales volume of all industry sources for such year.

(3) RELEVANT DOMESTIC TOBACCO PRODUCT UNIT SALES VOLUME.—

(A) IN GENERAL.—For purposes of this subsection, the relevant domestic tobacco product unit sales volume of an industry source for

a year shall be determined by the Commissioner based on data submitted by industry sources and other appropriate data.

(4) ADJUSTMENTS.—

(A) VOLUME DECREASE.—If the Commissioner makes a determination under paragraph (3)(B) that the total relevant domestic tobacco product unit sales volume has decreased, the Commissioner shall in subsequent years, make determinations as to sales volume based solely on adult use.

(B) INCREASE IN PROFITS.—

(i) IN GENERAL.—With respect to an industry source that experiences a decrease in the amount owed under paragraph (2) for a year as compared to the previous year, the industry source shall be subject to an increase in such amount (as provided for under clause (ii)) if the Commissioner determines that the net operating profits of the source derived from domestic sales of tobacco products has increased over that of the previous year.

(ii) AMOUNT OF INCREASE.—The amount by which the amount owed by an

1 industry source is increased under clause
 2 (i) shall be equal to 25 percent of the
 3 amount of the decrease involved.

4 (C) INFLATION.—Each of the amounts de-
 5 scribed in subparagraphs (B) through (E) of
 6 paragraph (2) shall be increased by 3 percent
 7 each year, or adjusted each year to reflect the
 8 increase in the Consumer Price Index for all
 9 urban consumers (as published by the Bureau
 10 of Labor Statistics) from the year previous to
 11 the year for which the adjustment is being ap-
 12 plied, whichever is greater.

13 (e) AFFECT OF BANKRUPTCY.—Section 507(a) of
 14 title 11, United States Code, is amended by inserting after
 15 paragraph (9) the following:

16 “Tenth, payments required to be paid into the
 17 National Tobacco Settlement Trust Fund under sec-
 18 tion 402 of the Universal Tobacco Settlement Act.”.

19 (d) PASS-THROUGH.—An industry source that is re-
 20 quired to make payments under this section shall annually
 21 adjust the prices of the tobacco products sold by such
 22 source to reflect the amounts of such payments.

23 (e) TAX TREATMENT OF PAYMENTS.—For purposes
 24 of section 162 of the Internal Revenue Code of 1986, any
 25 payment to the Tobacco Settlement Trust Fund under

1 section 401 shall be considered to be an ordinary and nec-
 2 essary expense in carrying on a trade or business and shall
 3 be deductible in the taxable year in which paid.

4 **SEC. 403. ENFORCEMENT.**

5 (a) GENERAL RULE.—There is hereby imposed a
 6 penalty on the failure of any industry source to make any
 7 payment required under section 402.

8 (b) AMOUNT OF PENALTY.—The amount of the pen-
 9 alty imposed by subsection (a) on any failure with respect
 10 to an industry source shall be established by the Commis-
 11 sioner for each day during the noncompliance period.

12 (c) NONCOMPLIANCE PERIOD.—For purposes of this
 13 section, the term “noncompliance period” means, with re-
 14 spect to any failure to makes the payment required under
 15 section 402, the period—

16 (1) beginning on the due date for such pay-
 17 ment; and

18 (2) ending on the date on which such payment
 19 is paid in full.

20 (d) LIMITATIONS.—

21 (1) IN GENERAL.—No penalty shall be imposed
 22 by subsection (a) on any failure to make payment
 23 under section 402 during any period for which it is
 24 established to the satisfaction of the Commissioner
 25 that none of the persons responsible for such failure

1 knew or, exercising reasonable diligence, would have
2 known, that such failure existed.

3 ~~(2)~~ CORRECTIONS.—No penalty shall be im-
4 posed under subsection (a) on any failure to make
5 payment under section 402 if—

6 ~~(A)~~ such failure was due to reasonable
7 cause and not to willful neglect; and

8 ~~(B)~~ such failure is corrected during the 30-
9 day period beginning on the 1st date that any
10 of the persons responsible for such failure knew
11 or, exercising reasonable diligence, would have
12 known, that such failure existed.

13 ~~(3)~~ WAIVER.—In the case of any failure to
14 make payment under section 402 that is due to rea-
15 sonable cause and not to willful neglect, the Com-
16 missioner may waive all or part of the penalty im-
17 posed under subsection (a) to the extent that the
18 Commissioner determines that the payment of such
19 penalty would be excessive relative to the failure in-
20 volved.

**TITLE V—PUBLIC HEALTH AND
OTHER PROGRAMS**

**Subtitle A—Public Health Block
Grant Program**

SEC. 501. PUBLIC HEALTH TRUST FUND.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—The Secretary shall establish, as a separate fund within the Trust Fund established under section 401, a trust fund to be known as the “Public Health Trust Fund”, consisting of such amounts as may be appropriated or credited to the Trust Fund.

(2) TRUSTEES.—The trustees of the Trust Fund shall be the Commissioner and the Secretary.

(b) TRANSFERS.—There are hereby appropriated and transferred to the Trust Fund the amounts described in section 401(d)(1) with respect to the year involved.

(c) EXPENDITURES FROM TRUST FUND.—Amounts in the Public Health Trust Fund shall be available in each calendar year, as provided by appropriations Act, for block grants under section 502.

SEC. 502. BLOCK GRANTS TO STATES.

(a) IN GENERAL.—For the purpose described in subsection (b), the Secretary shall award a block grant to each State in each fiscal year in an amount based on the

1 allotment of the State as determined in accordance with
 2 section 503.

3 (b) **AUTHORIZED ACTIVITIES.**—A State shall use
 4 amounts received under a block grant only for the purpose
 5 of planning, carrying out, and evaluating activities as pro-
 6 vided for in section 504.

7 (c) **APPLICATION.**—To be eligible to receive a grant
 8 under this subtitle a State shall prepare and submit to
 9 the Secretary an application at such time, in such manner,
 10 and containing such information as the Secretary may re-
 11 quire, including such assurances as the Secretary may re-
 12 quire regarding the compliance of the State with the re-
 13 quirements of this Act.

14 **SEC. 503. ALLOTMENTS.**

15 (a) **IN GENERAL.**—Of the amounts appropriated and
 16 available for block grants for a fiscal year under section
 17 502, the Secretary shall allot to each State an amount
 18 determined under the allotment formula under subsection
 19 (b).

20 (b) **ALLOTMENT FORMULA.**—

21 (c) **REALLOTMENTS.**—To the extent that all the
 22 funds appropriated under section 501(c) for a fiscal year
 23 and available for allotment in such fiscal year are not oth-
 24 erwise allotted to States because—

1 (1) one or more States have not submitted an
 2 application in accordance with section 502(e) for the
 3 fiscal year; or

4 (2) one or more States have notified the Sec-
 5 retary that they do not intend to use the full amount
 6 of their allotment;

7 such excess shall be reallocated among each of the remain-
 8 ing States in proportion to the amount otherwise allotted
 9 to such States for the fiscal year without regard to this
 10 subsection.

11 (d) INDIAN TRIBES AND TRIBAL ORGANIZATIONS.—

12 (1) IN GENERAL.—If the Secretary—

13 (A) receives a request from the governing
 14 body of an Indian tribe or tribal organization
 15 within any State that funds under this subtitle
 16 be provided directly by the Secretary to such
 17 tribe or organization; and

18 (B) determines that the members of such
 19 tribe or tribal organization would be better
 20 served by means of grants made directly by the
 21 Secretary under this subtitle;

22 the Secretary shall reserve from amounts which
 23 would otherwise be allotted to such State under sub-
 24 section (a) for the fiscal year the amount determined
 25 under paragraph (2).

1 (2) AMOUNT.—The Secretary shall reserve for
 2 the purpose of paragraph (1) from amounts that
 3 would otherwise be allotted to such State under sub-
 4 section (a) an amount to be determined by a formula
 5 developed by the Secretary after consultation with
 6 the Secretary of the Interior.

7 (3) GRANT.—The amount reserved by the Sec-
 8 retary on the basis of a determination under this
 9 subsection shall be granted to the Indian tribe or
 10 tribal organization serving the individuals for whom
 11 such a determination has been made.

12 (4) PLAN.—In order for an Indian tribe or trib-
 13 al organization to be eligible for a grant for a fiscal
 14 year under this subsection, it shall submit to the
 15 Secretary a plan for such fiscal year which meets
 16 such criteria as the Secretary may prescribe.

17 (5) DEFINITIONS.—The terms “Indian tribe”
 18 and “tribal organization” shall have the same mean-
 19 ing given such terms in section 4(b) and section 4(c)
 20 of the Indian Self-Determination and Education As-
 21 sistance Act (25 U.S.C. 450b(b) and (c)).

22 **SEC. 504. USE OF FUNDS.**

23 (a) IN GENERAL.—Amounts provided to a State
 24 under a grant under this subtitle shall be used—

1 (1) to reimburse the State for expenses in-
 2 curred by the State under the State program under
 3 title XIX of the Social Security Act (42 U.S.C. 1396
 4 et seq.) relating to the treatment of tobacco-related
 5 illnesses or conditions;

6 (2) to reimburse the State for other expenses
 7 incurred by the State in providing directly, or reim-
 8 bursing others for the provision of, treatment for to-
 9 bacco-related illnesses or conditions;

10 (3) to provide health care coverage, either di-
 11 rectly or through arrangements with other entities,
 12 for uninsured individuals under 18 years of age who
 13 reside in the State;

14 (4) to establish a State tobacco products liabil-
 15 ity judgments and settlement fund, as provided for
 16 in subsection (c);

17 (5) to reimburse the State for expenses in-
 18 curred in carrying out the tobacco licensure require-
 19 ments of subtitle D of title I; and

20 (6) to carry out any other activities determined
 21 appropriate by the State.

22 (b) LIMITATIONS ON USES.—A State may not use
 23 amounts provided under a grant under this subtitle for
 24 programs or projects not approved of by the Secretary.

25 (c) JUDGMENT AND SETTLEMENT FUND.—

1 (1) IN GENERAL.—Each State that receives a
 2 grant under this subtitle shall establish a fund for
 3 the purpose of making payments under paragraph
 4 (2).

5 (2) PAYMENTS.—The fund established under
 6 paragraph (1) shall be used to make payments to in-
 7 dividuals who have obtained a judgment in a to-
 8 bacco-related action brought in a State court, or who
 9 have entered into a settlement of such an action, of
 10 the amount of any award under such judgment or
 11 settlement that represents punitive damages.

12 **SEC. 505. WITHHOLDING OF FUNDS.**

13 (a) AUTHORITY.—

14 (1) IN GENERAL.—The Secretary shall, after
 15 adequate notice and an opportunity for a hearing
 16 conducted within the affected State, withhold funds
 17 from any State which does not use its allotment in
 18 accordance with the requirements of this subtitle.
 19 The Secretary shall withhold such funds until the
 20 Secretary finds that the reason for the withholding
 21 has been removed and there is reasonable assurance
 22 that it will not recur.

23 (2) INVESTIGATION.—The Secretary may not
 24 institute proceedings to withhold funds under para-
 25 graph (1) unless the Secretary has conducted an in-

1 investigation concerning whether the State has used
2 its allotment in accordance with the requirements of
3 this subtitle. Investigations required by this para-
4 graph shall be conducted within the affected State
5 by qualified investigators.

6 (3) RESPONSE TO COMPLAINTS.—The Secretary
7 shall respond in an expeditious manner to com-
8 plaints of a substantial or serious nature that a
9 State has failed to use funds in accordance with the
10 requirements of this subtitle.

11 (4) MINOR FAILURE.—The Secretary may not
12 withhold funds under paragraph (1) from a State
13 for a minor failure to comply with the requirements
14 of this subtitle.

15 (b) INVESTIGATIONS.—The Secretary shall conduct
16 in several States in each fiscal year investigations of the
17 use of funds received by the States under this subtitle in
18 order to evaluate compliance with the requirements of this
19 subtitle.

20 (c) AVAILABILITY OF INFORMATION.—Each State,
21 and each entity which has received funds from an allot-
22 ment made to a State under this subtitle, shall make avail-
23 able to the Secretary, for examination, copying, or me-
24 chanical reproduction on or off the premises, appropriate

1 books, documents, papers, and records of the entity upon
 2 a reasonable request therefore.

3 **Subtitle B—Other Programs**

4 **SEC. 511. NATIONAL SMOKING CESSATION PROGRAM.**

5 (a) **ESTABLISHMENT.**—The Secretary shall establish
 6 a program to be known as the “National Smoking Ces-
 7 sation Program” under which the Secretary may award
 8 grants to eligible public and nonprofit entities and individ-
 9 uals for smoking cessation purposes.

10 (b) **ELIGIBILITY.**—

11 (1) **OF ENTITIES.**—To be eligible to receive a
 12 grant under this section an entity shall—

13 (A) be a public or nonprofit private entity;

14 (B) prepare and submit to the Secretary
 15 an application at such time, in such manner,
 16 and containing such information as the Sec-
 17 retary may require;

18 (C) provide assurances that amounts re-
 19 ceived under the grant will be used in accord-
 20 ance with subsection (c)(1); and

21 (D) meet any other requirements deter-
 22 mined appropriate by the Secretary.

23 (2) **OF INDIVIDUALS.**—To be eligible to receive
 24 a grant under this section an individual shall—

1 (A) prepare and submit to the Secretary
 2 an application at such time, in such manner,
 3 and containing such information as the Sec-
 4 retary may require;

5 (B) provide assurances that amounts re-
 6 ceived under the grant will be used only in ac-
 7 cordance with subsection (c)(2); and

8 (C) meet any other requirements deter-
 9 mined appropriate by the Secretary.

10 ~~(c) USE OF FUNDS.—~~

11 (1) BY ENTITIES.—An entity that receives a
 12 grant under this section shall use amounts provided
 13 under the grant to establish or administer tobacco
 14 product use cessation programs that are approved in
 15 accordance with subsection (d).

16 (2) BY INDIVIDUALS.—An individual that re-
 17 ceive a grant under this section shall use amounts
 18 provided under the grant to enroll in a tobacco prod-
 19 uct use cessation program or to purchase a tobacco
 20 product cessation device that has been approved in
 21 accordance with subsection (d). Grants to individuals
 22 under this section may be in the form of vouchers
 23 that may be used to pay the costs of enrollment in
 24 an approved program or to purchase an approved
 25 device.

1 (d) **APPROVAL OF CESSATION PROGRAM OR DE-**
 2 **VICES.**—Using the best available scientific information,
 3 the Secretary shall promulgate regulations to provide for
 4 the approval of tobacco product use cessation programs
 5 and devices. Such regulations shall be designed to ensure
 6 that tobacco product users, if requested, are provided with
 7 reasonable access to safe and effective cessation programs
 8 and devices. Such regulations shall ensure that such indi-
 9 viduals have access to a broad range of cessation options
 10 that are tailored to the needs of the individual tobacco
 11 user.

12 (e) **FUNDING.**—The Secretary shall use amounts
 13 available under section 401(d)(2) to carry out this section.

14 **SEC. 512. NATIONAL REDUCTION IN TOBACCO USAGE PRO-**
 15 **GRAM.**

16 (a) **ESTABLISHMENT.**—The Secretary shall establish
 17 a program to be known as the “National Reduction in To-
 18 bacco Usage Program” under which the Secretary may
 19 award grants to eligible public and nonprofit entities to
 20 carry out activities designed to reduce the use of tobacco
 21 products.

22 (b) **ELIGIBILITY.**—To be eligible to receive a grant
 23 under this section an entity shall—

24 (1) be a State health department, other public
 25 entity, or a nonprofit private entity;

1 (2) prepare and submit to the Secretary an ap-
 2 plication at such time, in such manner, and contain-
 3 ing such information as the Secretary may require;

4 (3) provide assurances that amounts received
 5 under the grant will be used in accordance with sub-
 6 section (e); and

7 (4) meet any other requirements determined ap-
 8 propriate by the Secretary.

9 (c) USE OF FUNDS.—An entity that receives a grant
 10 under this section shall use amounts provided under the
 11 grant to—

12 (1) carry out media-based and nonmedia-based
 13 education, prevention and cessation campaigns de-
 14 signed to discourage the use of tobacco products by
 15 individuals who are under 18 years of age and to en-
 16 courage those who use such products to quit;

17 (2) carry out research concerning, and provide
 18 for the development and public dissemination of,
 19 technologies and methods to reduce the risk of de-
 20 pendence and injury from tobacco product usage and
 21 exposure;

22 (3) provide for the identification, testing, and
 23 evaluation of the health effects of both tobacco and
 24 non-tobacco constituents of tobacco products; or

1 (4) carry out any other activities determined by
2 the Secretary to be consistent with the purposes of
3 this Act.

4 (d) FUNDING.—The Secretary shall use amounts
5 available under section 401(d)(3) to carry out this section.

6 **SEC. 513. NATIONAL TOBACCO-FREE PUBLIC EDUCATION**
7 **PROGRAM.**

8 (a) ESTABLISHMENT OF BOARD.—

9 (1) IN GENERAL.—The Secretary shall establish
10 an independent board to be known as the “Tobacco-
11 Free Education Board” (referred to in this section
12 as the “Board”) to enter into contracts with or
13 award grants to eligible public and nonprofit private
14 entities to carry out public informational and edu-
15 cational activities designed to reduce the use of to-
16 bacco products.

17 (2) APPOINTMENT.—The Board shall be com-
18 posed of 9 members to be appointed by the Sec-
19 retary, of which—

20 (A) at least 3 such members shall be an in-
21 dividual who is widely recognized by the general
22 public for achievement in the athletic, cultural,
23 entertainment, educational, business, or politi-
24 cal field; and

1 ~~(B)~~ at least 3 of whom shall be individuals
 2 who are heads of a major public health organi-
 3 zations.

4 ~~(3)~~ TERMS AND VACANCIES.—The members of
 5 the Board shall serve staggered terms as determined
 6 appropriate at the time of appointment by the Sec-
 7 retary. Any vacancy in the Board shall not affect its
 8 powers, but shall be filled in the same manner as the
 9 original appointment.

10 ~~(4)~~ POWERS.—

11 ~~(A)~~ HEARINGS.—The Board may hold
 12 such hearings, sit and act at such times and
 13 places, take such testimony, and receive such
 14 evidence as the Board considers advisable to
 15 carry out the purposes of this section.

16 ~~(B)~~ INFORMATION FROM FEDERAL AGEN-
 17 cies.—The Board may secure directly from any
 18 Federal department or agency such information
 19 as the Board considers necessary to carry out
 20 the provisions of this section.

21 ~~(5)~~ PERSONNEL MATTERS.—

22 ~~(A)~~ COMPENSATION.—Each member of the
 23 Board who is not an officer or employee of the
 24 Federal Government shall be compensated at a
 25 rate equal to the daily equivalent of the annual

1 rate of basic pay prescribed for level IV of the
 2 Executive Schedule under section 5315 of title
 3 5, United States Code, for each day (including
 4 travel time) during which such member is en-
 5 gaged in the performance of the duties of the
 6 Board. All members of the Board who are offi-
 7 cers or employees of the United States shall
 8 serve without compensation in addition to that
 9 received for their services as officers or employ-
 10 ees of the United States.

11 (B) TRAVEL EXPENSES.—The members of
 12 the Board shall be allowed travel expenses, in-
 13 cluding per diem in lieu of subsistence, at rates
 14 authorized for employees of agencies under sub-
 15 chapter I of chapter 57 of title 5, United States
 16 Code, while away from their homes or regular
 17 places of business in the performance of serv-
 18 ices for the Board.

19 (b) ESTABLISHMENT OF PROGRAM.—The Secretary
 20 shall establish a program to be known as the “National
 21 Tobacco-Free Public Education Program” under which
 22 the Board may enter into contracts with or award grants
 23 to eligible public and nonprofit private entities to carry
 24 out public informational and educational activities de-
 25 signed to reduce the use of tobacco products.

1 (c) ELIGIBILITY.—To be eligible to receive a grant
2 under this section an entity shall—

3 (1) be a—

4 (A) public entity or a State health depart-
5 ment; or

6 (B) nonprofit private entity that—

7 (i) is not affiliated with a tobacco
8 product manufacturer or importer;

9 (ii) has a demonstrated record of
10 working effectively to reduce tobacco prod-
11 uct use; and

12 (iii) has expertise in conducting a
13 multi-media communications campaign;

14 (2) prepare and submit to the Secretary an ap-
15 plication at such time, in such manner, and contain-
16 ing such information as the Secretary may require,
17 including a description of the activities to be con-
18 ducted using amounts received under the grant or
19 contract;

20 (3) provide assurances that amounts received
21 under the grant will be used in accordance with sub-
22 section (d); and

23 (4) meet any other requirements determined ap-
24 propriate by the Secretary.

1 (d) **USE OF FUNDS.**—An entity that receives a grant
 2 or contract under this section shall use amounts provided
 3 under the grant or contract to conduct multi-media public
 4 educational or informational campaigns that are designed
 5 to discourage and de-glamorize the use of tobacco prod-
 6 ucts. Such campaigns shall be designed to discourage the
 7 initiation of tobacco use by minors and encourage those
 8 using such products to quit.

9 (e) **NEEDS OF CERTAIN POPULATIONS.**—In awarding
 10 grants and contracts under this section, the Board shall
 11 take into consideration the needs of particular popu-
 12 lations.

13 (f) **FUNDING.**—The Secretary shall use amounts
 14 available under section 401(d)(4) to carry out this section.

15 **SEC. 514. NATIONAL EVENT SPONSORSHIP PROGRAM.**

16 (a) **ESTABLISHMENT.**—The Secretary shall establish
 17 a program to be known as the “National Event Sponsor-
 18 ship Program” under which the Secretary may award
 19 grants to eligible entities or individuals for the sponsorship
 20 of activities described in subsection (c).

21 (b) **ELIGIBILITY.**—To be eligible to receive a grant
 22 under this section an entity or individual shall—

23 (1) prepare and submit to the Secretary an ap-
 24 plication at such time, in such manner, and contain-

1 ing such information as the Secretary may require,
2 including—

3 (A) a description of the event, activity,
4 team, or entry for which the grant is to be pro-
5 vided;

6 (B) documentation that the event, activity,
7 team, or entry involved was sponsored or other-
8 wise funded by a tobacco manufacturer or dis-
9 tributor prior to the date of the application; and

10 (C) a certification that the applicant is un-
11 able to secure funding for the event, activity,
12 team, or entry involved from sources other than
13 those described in paragraph (2);

14 (2) provide assurances that amounts received
15 under the grant will be used in accordance with sub-
16 section (d); and

17 (3) meet any other requirements determined ap-
18 propriate by the Secretary.

19 (e) ~~PERMISSIBLE SPONSORSHIP ACTIVITIES.—~~
20 Events, activities, teams, or entries for which a grant may
21 be provided under this section include—

22 (1) an athletic, musical, artistic, or other social
23 or cultural event or activity that was sponsored in
24 whole or in part by a tobacco manufacturer or dis-
25 tributor prior to the date of enactment of this Act;

1 ~~(2)~~ the participation of a team that was spon-
2 sored in whole or in part by a tobacco manufacturer
3 or distributor prior to the date of enactment of this
4 Act, in an athletic event or activity; and

5 ~~(3)~~ the payment of a portion or all of the entry
6 fees of, or other financial or technical support pro-
7 vided to, an individual or team by a tobacco manu-
8 facturer or distributor prior to the date of enactment
9 of this Act, for participation of the individual in an
10 athletic, musical, artistic, or other social or cultural
11 event.

12 ~~(d)~~ USE OF FUNDS.—Amounts received under a
13 grant under this section shall be used to—

14 ~~(1)(A)~~ pay the costs associated with the spon-
15 sorship of an event or activity described in sub-
16 section ~~(c)~~(1);

17 ~~(B)~~ provide for the sponsorship of an individual
18 or team;

19 ~~(C)~~ pay the required entry fees associated with
20 the participation of an individual or team in an
21 event or activity described in subsection ~~(c)~~(3);

22 ~~(D)~~ provide financial or technical support to an
23 individual or team in connection with the participa-
24 tion of that individual or team in an activity de-
25 scribed in subsection ~~(c)~~(3); or

1 (E) for any other purposes determined appro-
2 priate by the Secretary; and

3 (2) promote images or activities to discourage
4 individuals from using tobacco products or encour-
5 age individuals who use such products to quit.

6 (c) ~~ALLOCATION OF UNEXPENDED FUNDS.—~~

7 Amounts available for purposes of carrying out this sec-
8 tion and remaining available at the end of the 10-year pe-
9 riod described in section 401(d)(5), shall be used as fol-
10 lows:

11 (1) 50 percent of such amounts shall be used
12 to supplement amounts available for multi-media
13 campaigns under section 512;

14 (2) 25 percent of such amounts shall be used
15 to supplement amounts available for enforcement
16 purposes under section 401(d)(8); and

17 (3) 25 percent of such amounts shall be used
18 to supplement amounts available for community ac-
19 tion programs under section 515.

20 (f) ~~FUNDING.—~~The Secretary shall use amounts
21 available under section 401(d)(5) to carry out this section.

22 **SEC. 515. NATIONAL COMMUNITY ACTION PROGRAM.**

23 (a) ~~ESTABLISHMENT.—~~The Secretary shall establish
24 a program to be known as the “National Community Ac-
25 tion Program” under which the Secretary may award

1 grants to eligible State and local governmental entities to
 2 carry out community-based tobacco control efforts that
 3 are designed to encourage community involvement in re-
 4 ducing tobacco product use.

5 (b) ELIGIBILITY.—To be eligible to receive a grant
 6 under this section an entity shall—

7 (1) be a State or local public entity;

8 (2) prepare and submit to the Secretary an ap-
 9 plication at such time, in such manner, and contain-
 10 ing such information as the Secretary may require;

11 (3) provide assurances that amounts received
 12 under the grant will be used in accordance with the
 13 purposes of this section; and

14 (4) meet any other requirements determined ap-
 15 propriate by the Secretary.

16 (c) FUNDING.—The Secretary shall use amounts
 17 available under section 401(d)(6) to carry out this section.

18 **SEC. 516. NATIONAL CESSATION RESEARCH PROGRAM.**

19 (a) ESTABLISHMENT.—The Secretary shall establish
 20 a program to be known as the “National Cessation Re-
 21 search Program” under which the Secretary may award
 22 grants to eligible entities for research concerning, and the
 23 development of methods, drugs, and devices to discourage
 24 individuals from using tobacco products and to assist indi-
 25 viduals who use such products in quitting such use.

1 ~~(b) ELIGIBILITY.—~~

2 ~~(c) USE OF FUNDS.—~~

3 ~~(d) ADDITIONAL REQUIREMENTS.—~~

4 ~~(e) FUNDING.—~~The Secretary shall use amounts
5 available under section 401(d)(7) to carry out this section.

6 **SEC. 517. USE OF SURCHARGE PAYMENTS.**

7 ~~(a) IN GENERAL.—~~Of the amount made available to
8 the Secretary each year under section 401(d)(9), the Sec-
9 retary shall—

10 ~~(1)~~ use not less than 90 percent of such amount
11 to award grants to State and local governmental and
12 public health agencies to carry out activities to fur-
13 ther reduce the use of tobacco products by individ-
14 uals who are under 18 years of age; and

15 ~~(2)~~ use not more than 10 percent of such
16 amount for the administrative costs associated with
17 the administration of title II and of chapter IX of
18 the Federal Food, Drug and Cosmetic Act (as added
19 by section 143(3)).

20 ~~(b) TRANSFER OF CERTAIN AMOUNTS.—~~If the Sec-
21 retary determines that the administrative costs described
22 in subsection ~~(a)(2)~~ are less than the amount available
23 under section subsection, the Secretary may—

24 ~~(1)~~ transfer any such excess amount to other
25 Federal, State, or local agencies to meet the needs

1 associated with the reduction of underage tobacco
2 usage; or

3 ~~(2) expend such amounts directly for activities~~
4 ~~to expedite the reduction of underage tobacco use.~~

5 (c) ELIGIBILITY.—To be eligible to receive a grant
6 under this section an entity shall—

7 (1) be a State or local governmental or public
8 health agency;

9 ~~(2) prepare and submit to the Secretary an ap-~~
10 ~~plication at such time, in such manner, and contain-~~
11 ~~ing such information as the Secretary may require;~~

12 ~~(3) provide assurances that amounts received~~
13 ~~under the grant will be used in accordance with this~~
14 ~~section; and~~

15 ~~(4) meet any other requirements determined ap-~~
16 ~~propriate by the Secretary.~~

17 (d) FUNDING.—The Secretary shall use amounts
18 available under section 401(d)(9) to carry out this section.

19 **TITLE VI—CONSENT DECREES,**
20 **NON-PARTICIPATING MANU-**
21 **FACTURERS, AND STATE EN-**
22 **FORCEMENT**

23 **SEC. 601. PURPOSES.**

24 It is the purpose of this title to provide for the estab-
25 lishment of consent decrees and the imposition of certain

1 payment provisions, in addition to those otherwise pro-
 2 vided for under Federal or State laws, to encourage manu-
 3 facturers, distributors, and retailers to comply with this
 4 Act, and to otherwise provide for the enforcement of this
 5 Act with respect to non-participating manufacturers.

6 **Subtitle A—Consent Decrees and** 7 **Non-Participating Manufacturers**

8 **SEC. 611. CONSENT DECREES.**

9 (a) REQUIREMENT.—To be eligible to receive pay-
 10 ments under title V, a State, and to be eligible to receive
 11 liability protections under title VII, a tobacco manufac-
 12 turer or distributor, shall enter into consent decrees under
 13 this section to be effective on the date of enactment of
 14 this Act.

15 (b) TERMS AND CONDITIONS.—

16 (1) IN GENERAL.—The terms and conditions
 17 contained in the consent decrees described in sub-
 18 section (a) shall contain provisions to clarify the ap-
 19 plication and requirements of this Act (and the
 20 amendments made by this Act), including provisions
 21 relating to—

22 (A) restrictions on tobacco product adver-
 23 tising and marketing and youth access to such
 24 products;

1 (B) the termination, establishment, and
2 operation of trade associations;

3 (C) restrictions on tobacco lobbying;

4 (D) the disclosure of tobacco smoke con-
5 stituents;

6 (E) the disclosure of nontobacco ingredi-
7 ents found in tobacco products;

8 (F) the disclosure of existing and future
9 documents relating to health, toxicity, and addi-
10 tion related to tobacco product usage;

11 (G) compliance and corporate culture;

12 (H) the obligation of manufacturers to
13 make payments for the benefit of States;

14 (I) the obligation of manufacturers to
15 interact only with distributors and retailers that
16 operate in compliance with the applicable provi-
17 sions of Federal, State, or local law regarding
18 the marketing and sale of tobacco products;

19 (J) requirements for warnings, labeling,
20 and packaging of tobacco products;

21 (K) the dismissal of pending litigation as
22 required under title VII and as agreed to by the
23 parties to the decree; and

24 (L) any other matter determined appro-
25 priate by the Secretary or the parties involved.

1 (2) LIMITATIONS.—The terms and conditions
2 contained in the consent decrees described in sub-
3 section (a) shall not contain provisions relating to—

4 (A) tobacco product design, performance,
5 or modification;

6 (B) manufacturing standards and good
7 manufacturing practices;

8 (C) testing and regulation with respect to
9 toxicity and ingredients approval; and

10 (D) the required percentage reductions in
11 the underage use of tobacco products for a year
12 under section 204.

13 (3) WAIVER OF CONSTITUTIONAL CLAIMS.—The
14 terms and conditions contained in the consent de-
15 crees described in subsection (a) shall include a pro-
16 vision waiving the Federal or State constitutional
17 claims of the parties and providing for the severabil-
18 ity of the provisions of the decree.

19 (4) CONSTRUCTION.—The terms and conditions
20 contained in the consent decrees described in sub-
21 section (a) shall provide that the terms of the decree
22 will be construed in a manner that is consistent with
23 the provision of this Act.

1 ~~(c) APPROVAL.—~~To be valid under this section, the
 2 provisions of a consent decree must be approved by the
 3 Secretary prior to approval or entry by a court.

4 ~~(d) ENFORCEMENT.—~~

5 ~~(1) CHANGES IN LAW.—~~The provisions of a
 6 consent decree entered under this section shall re-
 7 main in effect and enforceable regardless of whether
 8 the provisions of this Act are amended, except that
 9 any amendments to this Act that—

10 ~~(A)~~ establish Federal requirements that
 11 are in conflict with obligations contained in the
 12 consent decrees shall render such obligations
 13 unenforceable;

14 ~~(B)~~ require allocations of funds that are in
 15 conflict with the allocation contained in the con-
 16 sent decrees shall render such consent decree
 17 allocation unenforceable; and

18 ~~(C)~~ require warnings, labeling, or packag-
 19 ing that conflicts with the warning, labeling, or
 20 packaging requirements of the consent decree;
 21 shall require that modifications be made in the
 22 consent decree to conform with such amend-
 23 ments.

24 ~~(2) BY STATE.—~~

1 (A) ~~IN GENERAL.~~—A State may bring an
 2 action to enforce the provisions of any consent
 3 decree under this section in any appropriate
 4 State court. Such proceedings may seek injune-
 5 tive relief only and may not seek criminal or
 6 monetary sanctions. Enforcement of any injune-
 7 tive relief provided under a State action under
 8 this section shall be permitted under any appli-
 9 cable State law.

10 (B) ~~CONSISTENCY.~~—The Secretary, in con-
 11 sultation with the Attorney General, shall pro-
 12 mulgate regulations to ensure the consistency of
 13 State court ruling with respect to conduct
 14 under a consent decree that is not exclusively
 15 local in nature.

16 **SEC. 612. NATIONAL TOBACCO CONTROL PROTOCOL.**

17 (a) ~~REQUIREMENT.~~—Not later than 6 months after
 18 the date of enactment of this Act, each tobacco manufac-
 19 turer to which this Act applies shall enter into a National
 20 Tobacco Control Protocol.

21 (b) ~~TERMS AND CONDITIONS.~~—The Protocol referred
 22 to in subsection (a) shall be—

23 (1) developed by the Secretary as a binding and
 24 enforceable contract that embodies the terms of this
 25 Act; and

1 (2) designed to be enforceable in Federal or
2 State courts.

3 **SEC. 613. NON-PARTICIPATING MANUFACTURERS.**

4 (a) IN GENERAL.—With respect to a manufacturer
5 that elects not to enter into a consent decree under section
6 602, such manufacturer shall not be eligible to receive the
7 liability protections under title VII.

8 (b) IMPOSITION OF USER FEE.—

9 (1) IN GENERAL.—Each manufacturer that
10 elects not to enter into a consent decree under sec-
11 tion 602 and not to become a signatory to the Na-
12 tional Tobacco Control Protocol under section 603
13 shall be subject to an annual fee established under
14 this subsection.

15 (2) AMOUNT OF FEE.—

16 (A) TOTAL.—The total amount of all fees
17 established under this subsection for a year
18 shall be equal to the amounts provided under
19 paragraphs (1) and (8) of section 401(d) for
20 the year.

21 (B) PER MANUFACTURER.—The Secretary
22 shall promulgate regulations for the purpose of
23 assessing fees under this subsection and deter-
24 mining the amount of the fee to be assessed to
25 each manufacturer.

1 (c) ~~SETTLEMENT RESERVE FUND.—~~

2 (1) ~~IN GENERAL.—~~Each manufacturer to which
 3 subsection (b)(1) applies shall annually deposit into
 4 an escrowed reserve fund an amount equal to 150
 5 percent of the amount that such manufacturer would
 6 have paid under section 402 (except for that portion
 7 of the payments that would have been made avail-
 8 able under paragraphs (1) and (8) of section 401(d))
 9 for the year in which the manufacturer is making
 10 such deposit if the manufacturer had been a signa-
 11 tory to the National Tobacco Control Protocol under
 12 section 603.

13 (2) ~~USE.—~~Amounts contained in the reserve
 14 fund of a manufacturer under paragraph (1) shall
 15 be used solely for tobacco-related liability payments.
 16 The manufacturer may reclaim any amounts remain-
 17 ing in the fund (with interest) at the end of the 35-
 18 year period beginning on the date on which such
 19 fund is established.

20 **Subtitle B—State Enforcement**

21 **SEC. 621. REQUIREMENT OF NO SALE TO MINORS LAW.**

22 (a) ~~RELEVANT LAW.—~~

23 (1) ~~IN GENERAL.—~~Subject to paragraph (2),
 24 for each calendar year, the Secretary may not make
 25 any payments to a State under section 403 unless

1 the State involved has in effect a law providing that
 2 it is unlawful for any manufacturer, retailer, or dis-
 3 tributor of tobacco products to sell or distribute any
 4 such product to any individual under the age of 18
 5 that meets the requirements of this section.

6 ~~(2) DELAYED APPLICABILITY FOR CERTAIN~~
 7 ~~STATES.—~~In the case of a State whose legislature
 8 does not convene a regular session in fiscal year
 9 1997, and in the case of a State whose legislature
 10 does not convene a regular session in fiscal year
 11 1998, the requirement described in paragraph (1) as
 12 a condition of a receipt of payments under section
 13 403 shall apply only for fiscal year 1999 and subse-
 14 quent fiscal years.

15 ~~(b) REQUIREMENTS.—~~A State law described in sub-
 16 section (a) shall comply with the following:

17 ~~(1) PROHIBITION ON SALE.—~~Such law shall
 18 provide that it is unlawful for any manufacturer, re-
 19 tailer, or distributor of tobacco products to sell or
 20 distribute any such product within the State to any
 21 individual under the age of 18 years.

22 ~~(2) PURCHASE, RECEIPT OR POSSESSION.—~~

23 ~~(A) IN GENERAL.—~~Such law shall provide
 24 that an individual under 18 years of age shall
 25 not purchase or attempt to purchase, receive or

1 attempt to receive, possess or attempt to pos-
2 sess, smoke or attempt to smoke, or otherwise
3 use or consume or attempt to use or consume
4 a tobacco product in a public place.

5 (B) EMPLOYMENT.—Such law may permit
6 an individual under the age of 18 to possess a
7 tobacco product during regular working hours
8 and in the course of such individual's employ-
9 ment if the tobacco product is not possessed for
10 such individual's consumption.

11 (3) INSPECTIONS.—

12 (A) IN GENERAL.—Such law shall provide
13 that the State Police of a State, or such local
14 law enforcement authority duly designated by
15 the State Police, shall enforce this law in a
16 manner that can reasonably be expected to re-
17 duce the extent to which tobacco products are
18 distributed to individuals under 18 years of age
19 and shall, at least monthly, conduct random,
20 unannounced inspections in accordance with
21 regulations promulgated by the Secretary under
22 this section to ensure compliance with this law.

23 (B) CONDUCT.—Inspections under this
24 paragraph shall be conducted in communities
25 geographically and statistically representative of

1 the entire State and the youth population of the
2 State. Not less than 250 such inspections shall
3 be conducted with respect to each 1,000,000
4 residents of the State.

5 **SEC. 622. STATE REPORTING.**

6 (a) IN GENERAL.—Not later than 2 years after the
7 date of enactment of this Act, and annually thereafter,
8 the State shall prepare and submit to the Secretary a re-
9 duction in tobacco product usage report. Such report shall,
10 except as provided in subsection (b)(3), be made available
11 to the general public of the State.

12 (b) CONTENTS.—A report submitted under sub-
13 section (a) shall include—

14 (1) a detailed description of the enforcement ac-
15 tivities undertaken by the State and the political
16 subdivisions of the State concerning tobacco product
17 usage laws for the year for which the report is being
18 prepared;

19 (2) a detailed description of the progress of the
20 State in reducing the availability of tobacco products
21 to individuals under 18 years of age, including the
22 detailed statistical results of the compliance inspec-
23 tion required under section 621;

24 (3) a detailed description of the methods used
25 in such compliance inspection and in identifying out-

1 lets which were tested (the Secretary shall provide
 2 protections for the confidentiality of information
 3 provided under this paragraph);

4 (4) a detailed description of the strategies that
 5 the State intends to utilize in the current and suc-
 6 ceeding years to make further progress on reducing
 7 the availability of tobacco products to individuals
 8 under 18 years of age; and

9 (5) the identity of a single State agency that is
 10 responsible for administering the requirements of
 11 title III in the State.

12 **SEC. 623. REDUCTION IN STATE PAYMENTS.**

13 (a) **ANNUAL DETERMINATION.**—Beginning with re-
 14 spect to the fifth full fiscal year after the date of enact-
 15 ment of this Act, and each fiscal year thereafter the Sec-
 16 retary shall make a determination as to whether each
 17 State has pursued all reasonably available measures to en-
 18 force the law described in section 621.

19 (b) **PRESUMPTIVE FINDING.**—The Secretary shall
 20 find presumptively that a State has not pursued all rea-
 21 sonably available measures to enforce the law described
 22 in section 621 if the Secretary determines that the State
 23 has not achieved the following compliance rate results
 24 based on the findings of the retail compliance inspections
 25 conducted under the State law.

1 (1) With respect to each of the fifth and sixth
2 fiscal years following the date of enactment, 75 per-
3 cent compliance with State law.

4 (2) With respect to each of the seventh through
5 ninth fiscal years following the date of enactment,
6 85 percent compliance with State law.

7 (3) With respect to the tenth and each subse-
8 quent fiscal year following the date of enactment, 90
9 percent compliance with State law.

10 (c) AMOUNT OF REDUCTION.—

11 (1) IN GENERAL.—With respect to a State that
12 the Secretary determines does not meet the compli-
13 ance rates described in subsection (b), the Secretary
14 may reduce the amount that the State may be eligi-
15 ble for under section 501. The amount of any such
16 reduction shall not exceed an amount equal to 1 per-
17 cent of the amount for which the State is eligible for
18 under section 501 for the fiscal year involved for
19 each 1 percentage point by which the State's compli-
20 ance performance is below the applicable compliance
21 rate.

22 (2) LIMITATION.—In no event shall the amount
23 of any reduction under this section exceed an
24 amount equal to 20 percent of the amount for which

1 the State is eligible for under section 501 for the fis-
 2 cal year involved.

3 ~~(3)~~ REALLOTMENT.—The Secretary shall
 4 realLOT any amounts withheld under this subsection
 5 to States with compliance rates that exceed the rates
 6 applicable under subsection (b) in amounts to be de-
 7 termined by the Secretary as appropriate to reward
 8 States with the highest compliance rates.

9 ~~(d)~~ REVIEW.—

10 ~~(1)~~ PETITION FOR RELEASE.—Not later than
 11 90 days after the date on which a notice from the
 12 Secretary that the Secretary intends to make a re-
 13 duction under subsection (c) is received, a State may
 14 petition the Secretary for a release and disburse-
 15 ment of such amount (referred to in this subsection
 16 as the “withhold amount”). The State shall give
 17 prompt written notice of such petition to the State
 18 attorney general.

19 ~~(2)~~ ACTION BY SECRETARY.—

20 ~~(A)~~ HOLDING AND INVESTING OF
 21 FUNDS.—Upon receipt of a petition under para-
 22 graph (1), the Secretary shall designate the
 23 withhold amount as subject to a petition and in-
 24 vest such amount in interest-bearing securities

1 of the United States subject to a final disposi-
2 tion of the petition.

3 (B) BASIS FOR DETERMINATION.—In con-
4 sidering a petition received under paragraph
5 (1), the Secretary shall consider—

6 (i) whether the State has acted in
7 good faith and in full compliance with the
8 provisions of this Act (and the amend-
9 ments made by this Act) and any regula-
10 tions promulgated in furtherance of this
11 Act;

12 (ii) whether the State has pursued all
13 reasonably available measures to achieve
14 the compliance rates applicable under sub-
15 section (b) and the goals of this Act for re-
16 ducing the underage use of tobacco prod-
17 ucts;

18 (iii) whether there is any evidence of
19 any direct or indirect action taken by the
20 State to undermine the achievement of the
21 compliance rates and goals described in
22 clause (ii); and

23 (iv) any other evidence determined ap-
24 propriate by the Secretary.

1 (C) BURDEN.—With respect to any action
 2 by the Secretary on a petition under paragraph
 3 (1), the burden shall be on the State to prove,
 4 by a preponderance of the evidence, that the
 5 State should be granted a release and disburse-
 6 ment under the petition.

7 (D) HEARING.—The Secretary shall hold a
 8 hearing, with notice and an opportunity to be
 9 heard provided to the attorney general of the
 10 State and to manufacturers, prior to making
 11 any determination as to a petition under para-
 12 graph (1).

13 (E) RELEASE OF FUNDS.—Upon a deter-
 14 mination by the Secretary that the State has
 15 met the burden imposed under subparagraph
 16 (C) with respect to a petition, the Secretary
 17 shall disburse not to exceed 75 percent of the
 18 withhold amount (and any interest accrued on
 19 such amount) to the State. The Secretary may
 20 consider all relevant evidence in determining the
 21 amount to disburse to the State under this sub-
 22 paragraph.

23 (3) APPEALS.—

24 (A) IN GENERAL.—Any manufacturer or
 25 State attorney general aggrieved by a decision

of the Secretary under paragraph (2) may, within 30 days of the date of such decision, seek judicial review of the decision in the United States Court of Appeals for the District of Columbia Circuit. The provisions of sections 701 through 706 of title 5, United States Code, shall apply to appeals filed under this paragraph.

(B) LIMITATION.—No stay or other injunctive relief that has the effect of enjoining the withholding of amounts under this section shall be permitted during the pendency of an appeal filed under this paragraph.

(C) FINALITY.—The decision of the Court of Appeals in an action under this paragraph shall be final.

TITLE VII—PROVISIONS RELATING TO TOBACCO-RELATED CIVIL ACTIONS

SEC. 701. GENERAL IMMUNITY.

(a) STATE ATTORNEY GENERAL ACTIONS.—

(1) PENDING ACTIONS.—Civil actions that have been commenced by a State or local governmental entity, or on behalf of such an entity, against a manufacturer, distributor, or retailer that is a signa-

1 tory to the National Tobacco Control Protocol under
2 section 612, and that are pending on the date of en-
3 actment of this Act are terminated.

4 (2) FUTURE ACTIONS.—A manufacturer, dis-
5 tributor or retailer that is a signatory to the Na-
6 tional Tobacco Control Protocol under section 612
7 shall be immune from any civil action commenced
8 after the date of enactment of this Act by a Federal,
9 State, or local governmental entity, or on behalf of
10 such an entity, for all claims arising from the use
11 of a tobacco product.

12 (b) OTHER ACTIONS.—

13 (1) CLASS ACTIONS.—

14 (A) PENDING ACTIONS.—Class actions for
15 claims arising from the use of a tobacco prod-
16 uct that are pending against a manufacturer,
17 distributor, or retailer that is a signatory to the
18 National Tobacco Control Protocol under sec-
19 tion 612, are terminated.

20 (B) FUTURE ACTIONS.—A manufacturer,
21 distributor, or retailer that is a signatory to the
22 National Tobacco Control Protocol under sec-
23 tion 612 shall be immune from any class action
24 commenced after the date of enactment of this

1 Act for all claims arising from the use of a to-
 2 bacco product.

3 ~~(2) ADDICTION AND DEPENDENCE CLAIMS.—~~

4 ~~(A) PENDING ACTIONS.—Any civil action~~
 5 ~~for claims based on addition to or dependence~~
 6 ~~on a tobacco product that are pending against~~
 7 ~~a manufacturer, distributor, or retailer that is~~
 8 ~~a signatory to the National Tobacco Control~~
 9 ~~Protocol under section 612, are terminated.~~

10 ~~(B) FUTURE ACTIONS.—A manufacturer,~~
 11 ~~distributor, or retailer that is a signatory to the~~
 12 ~~National Tobacco Control Protocol under sec-~~
 13 ~~tion 612 shall be immune from any civil action~~
 14 ~~commenced after the date of enactment of this~~
 15 ~~Act for all claims based on addition to or de-~~
 16 ~~pendence on a tobacco product.~~

17 ~~(c) PRESERVATION.—All personal injury claims aris-~~
 18 ~~ing from the use of a tobacco product by an individual~~
 19 ~~shall be preserved.~~

20 **SEC. 702. CIVIL LIABILITY FOR PAST CONDUCT.**

21 ~~(a) APPLICATION.—The provisions of this section~~
 22 ~~shall apply to all civil actions permitted under section 701~~
 23 ~~for relief arising from the conduct of a manufacturer, dis-~~
 24 ~~tributor, or retailer that is a signatory to the National To-~~

1 bacco Control Protocol under section 612 that occurred
2 prior to the date of enactment of this Act.

3 (b) ~~PUNITIVE DAMAGES PROHIBITED.~~—No punitive
4 damages shall be awarded in any claim described in sub-
5 section (a).

6 (c) ~~INDIVIDUAL TRIALS.~~—No class action suits, join-
7 der of parties, aggregation of claims, consolidation of ac-
8 tions, extrapolations, or other devices to resolve cases
9 other than on the basis of individual actions shall be per-
10 mitted without the consent of the defendant. Any defend-
11 ant, in an action that involves a violation of this sub-
12 section, may remove such action to an appropriate Federal
13 court.

14 (d) ~~JOINT SHARING AGREEMENT.~~—As part of the
15 National Tobacco Control Protocol under section 612, all
16 signatories shall agree to the joint sharing of any civil li-
17 ability for actions for damages arising from the use of to-
18 bacco products. Such signatories shall not be jointly and
19 severally liable for damages involving nonsignatories. Ac-
20 tions involving both signatories and nonsignatories shall
21 be severed.

22 (e) ~~PERMISSIBLE PARTIES.~~—

23 (1) ~~PLAINTIFFS.~~—The following individuals
24 may be plaintiffs in a civil action to which this sec-
25 tion applies:

1 (A) Individuals bringing claims, or claims
2 derivative of such claims, on their own behalf
3 for a tobacco-related injury, or the heirs of such
4 individuals.

5 (B) Third-party payors for claims not
6 based on subrogation that were pending on
7 June 9, 1997.

8 (C) Third-party payors for claims based on
9 subrogation of individual claims permitted
10 under subparagraph (A).

11 (2) DEFENDANTS.—This section shall apply
12 only to actions brought against a signatory of the
13 National Tobacco Control Protocol under section
14 612, a successor or assign of such a signatory, any
15 future fraudulent transferees, or any entity for suit
16 designated to survive a defunct signatory. Such sig-
17 natories shall be vicariously liable for the actions of
18 their agents.

19 (f) REMOVAL.—Except as provided in subsection (e),
20 there shall be no removal of a action to which this section
21 applies.

22 (g) DISCOVERY.—The development, after the date of
23 enactment of this Act, of any tobacco product that reduces
24 the risk of injury or illness to a user shall not be admissi-
25 ble or discoverable.

1 (h) CAPS ON SETTLEMENTS.—

2 (1) AGGREGATE ANNUAL CAP.—With respect to
3 a calendar year, the aggregate amount of all tobacco
4 claims judgments or settlements to which this sec-
5 tion applies, that the signatories of the National To-
6 bacco Control Protocol under section 612 shall be
7 required to pay, shall not exceed an amount equal to
8 33 percent of the annual payment required under
9 section 402 for the year involved.

10 (2) PAYMENT OF EXCESS.—If the amount of
11 the judgments and settlements described in para-
12 graph (1) exceed an amount equal to 33 percent of
13 the annual payment required under section 402 for
14 the year involved, such excess amount shall be paid
15 in the following year.

16 (3) AFFECT OF SETTLEMENT.—The signatories
17 described in paragraph (1) shall receive a credit, to
18 be applied against the amount owed by such signato-
19 ries to the National Tobacco Settlement Trust Fund
20 for the year involved, in an amount equal to 80 per-
21 cent of the aggregate amounts paid under judgments
22 or settlements of tobacco-related claims to which this
23 section applies for such year.

24 (4) INDIVIDUAL CAP.—With respect to an ac-
25 tion to which this section applies, any amount

1 awarded in excess of \$1,000,000 may be paid in the
 2 year following the year in which the judgment or
 3 settlement was entered, except that this paragraph
 4 shall not apply if all other awards under judgments
 5 or settlements entered in the first year can be paid
 6 without exceeding the aggregate annual cap under
 7 paragraph (1). Such excess amount shall carry over
 8 from year to year with no payments in any single
 9 year exceeding \$1,000,000 and no interest accruing
 10 on such amounts until such time as the annual ag-
 11 gregate cap is not exceeded.

12 ~~(5) UNUSED PORTION OF CREDIT.—~~

13 (i) **DEFENSE COSTS.**—The signatories of the Na-
 14 tional Tobacco Control Protocol under section 612 shall
 15 be responsible for the payment of all attorneys' fees and
 16 other costs associated with being a defendant in an action
 17 to which this section applies.

18 **SEC. 703. CIVIL LIABILITY FOR FUTURE CONDUCT.**

19 (a) **APPLICATION.**—The provisions of this section
 20 shall apply to all civil actions permitted under section 701
 21 for relief arising from the conduct of a manufacturer, dis-
 22 tributor, or retailer that is a signatory to the National To-
 23 bacco Control Protocol under section 612 that occurs after
 24 the date of enactment of this Act.

1 (b) ~~GENERAL PROVISIONS.~~—The provisions of sub-
 2 sections (c) and (c) through (i) of section 702 shall apply
 3 to actions under this section.

4 (c) ~~THIRD-PARTY PAYOR CLAIMS.~~—Third-party
 5 payor claims that are not based on subrogation shall not
 6 be commenced under this section.

7 **SEC. 704. NON-PARTICIPATING MANUFACTURERS.**

8 The provisions of this title shall not apply to any
 9 manufacturer, distributor, or retailer that is not a signa-
 10 tory to the National Tobacco Control Protocol under sec-
 11 tion 612.

12 **TITLE VII—PUBLIC DISCLO-**
 13 **SURE OF HEALTH RESEARCH**

14 **SEC. 801. PURPOSE.**

15 It is the purpose of this title to provide for the disclo-
 16 sure of previously nonpublic or confidential documents by
 17 manufacturers of tobacco products, including the results
 18 of internal health research, and to provide for a procedure
 19 to settle claims of attorney-client privilege, work product,
 20 or trade secrets with respect to such documents.

21 **SEC. 802. NATIONAL TOBACCO DOCUMENT DEPOSITORY.**

22 (a) ~~ESTABLISHMENT.~~—To be eligible to receive the
 23 protections provided under title VII, manufacturers of to-
 24 bacco products, acting in conjunction with the Tobacco In-
 25 stitute and the Council for Tobacco Research, U.S.A.

1 ~~(prior to the termination of such entities under section~~
 2 ~~155), shall, not later than 180 days after the date of en-~~
 3 ~~actment of this Act, establish and maintain a National To-~~
 4 ~~bacco Document Depository (in this title referred to as~~
 5 ~~the “Depository”). Such Depository shall be located in the~~
 6 ~~Washington, D.C. area and be open to the public.~~

7 (b) ~~USE OF DEPOSITORY.~~—The Depository shall be
 8 maintained in a manner that permits the Depository to
 9 be used as a resource for litigants, public health groups,
 10 and any other individuals who have an interest in the cor-
 11 porate records and research of the manufacturers concern-
 12 ing smoking and health, addiction or nicotine dependency,
 13 safer or less hazardous cigarettes, and underage tobacco
 14 use and marketing.

15 (c) ~~CONTENTS.~~—The Depository shall include (and
 16 manufacturers and the Tobacco Institute and the Council
 17 for Tobacco Research, U.S.A. shall provide)—

18 (1) ~~within 180 days of the date of enactment of~~
 19 this Act, all documents provided by such entities to
 20 plaintiffs in—

21 (A) ~~civil or eriminal actions brought by~~
 22 State attorneys general (including all docu-
 23 ments selected by plaintiffs from the Guilford
 24 Repository of the United Kingdom);

1 (B) Philip Morris Companies Inc.'s defa-
2 mation action against Capital Cities/American
3 Broadcasting Company News;

4 (C) the Federal Trade Commission's inves-
5 tigation concerning Joe Camel and underage
6 marketing;

7 (D) the *Haines* and *Cippollone* actions;
8 and

9 (E) the *Butler* action in Mississippi;

10 (2) within 90 days after the date of enactment
11 of this Act, any exiting documents discussing or re-
12 ferring to health research, addiction or dependency,
13 safer or less hazardous cigarettes, studies of the
14 smoking habits of minors, and the relationship be-
15 tween advertising or promotion and youth smoking;
16 that the entities described in subsection (a) have not
17 completed producing as required in the actions de-
18 scribed in paragraph (1);

19 (3) within 180 days of the date of enactment of
20 this Act, all documents relating to indices (as de-
21 fined by the court in the Minnesota Attorney Gen-
22 eral action) of documents relating to smoking and
23 health, including all indices identified by the manu-
24 facturers in the Washington, Texas, and Minnesota
25 Attorney General actions;

1 (4) upon the settlement of any action referred
2 to in this subsection, and after a good-faith, de novo,
3 document-by-document review of all documents pre-
4 viously withheld from production in any actions on
5 the grounds of attorney-client privilege, all docu-
6 ments determined to be outside of the scope of the
7 privilege;

8 (5) all existing or future documents relating to
9 original laboratory research concerning the health or
10 safety of tobacco products, including all laboratory
11 research results relating to methods used to make
12 tobacco products less hazardous to consumers;

13 (6) a comprehensive new attorney-client privi-
14 lege log of all documents, itemized in sufficient de-
15 tail so as to enable any interested individual to de-
16 termine whether the individual will challenge the
17 claim of privilege, that the entities described in sub-
18 section (a) (based on the de novo review of such docu-
19 ments by such entities) claim are protected from
20 disclosure under the attorney-client privilege;

21 (7) all existing or future documents relating to
22 studies of the smoking habits of minors or docu-
23 ments referring to any relationship between advertis-
24 ing and promotion and underage smoking; and

1 (8) all other documents determined appropriate
2 under regulations promulgated by the Secretary.

3 ~~(d) DISPUTE RESOLUTION PANEL.—~~

4 ~~(1) ESTABLISHMENT.—~~The Judicial Conference
5 of the United States shall establish a Tobacco Docu-
6 ments Dispute Resolution Panel, to be composed of
7 three Federal judges to be appointed by the Con-
8 ference, to resolve all disputes involving claims of at-
9 torney-client, work product, or trade secrets privilege
10 with respect to documents required to be deposited
11 into the Depository under subsection (c) that may be
12 brought by Federal, State, or local governmental of-
13 ficials or the public or asserted in any action by a
14 manufacturer.

15 ~~(2) BASIS FOR DETERMINATIONS.—~~The deter-
16 minations of the Panel established under paragraph
17 ~~(1)~~ shall be based on—

18 ~~(A)~~ the American Bar Association/Amer-
19 ican Law Institute Model Rules or the prin-
20 ciples of Federal law with respect to attorney-
21 client or work product privilege; and

22 ~~(B)~~ the Uniform Trade Secrets Act with
23 respect to trade secrecy.

1 (3) **DECISION.**—Any decision of the Panel es-
 2 tablished under paragraph (1) shall be final and
 3 binding upon all Federal and State courts.

4 (4) **ASSESSING OF FEES.**—As part of a deter-
 5 mination under this subsection, the Panel estab-
 6 lished under paragraph (1) shall determined whether
 7 a claimant of the privilege acted in good faith and
 8 had a factual and legal basis for asserting the claim.
 9 If the Panel determines that the claimant did not
 10 act in good faith, the Panel may assess costs against
 11 the claimant, including a reasonable attorneys' fee,
 12 and may apply such other sanctions as the Panel de-
 13 termines appropriate.

14 (5) **ACCELERATED REVIEW.**—The Panel estab-
 15 lished under paragraph (1) shall establish proce-
 16 dures for the accelerated review of challenges to a
 17 claim of privilege. Such procedures shall include as-
 18 surances that an individual filing a challenge to such
 19 a claim need not make a prima facie showing of any
 20 kind as a prerequisite to an in camera review of the
 21 documents at issue.

22 (6) **SPECIAL MASTERS.**—The Panel established
 23 under paragraph (1) may appoint Special Masters in
 24 accordance with Rule 53 of the Federal Rules of
 25 Civil Procedure. The cost relating to any Special

1 Master shall be assessed to the manufacturers as
2 part of a fee process to be established under regula-
3 tions promulgated by the Secretary.

4 (e) OTHER PROVISIONS.—

5 (1) NO WAIVER OF PRIVILEGE.—Compliance
6 with this section by the entities described in sub-
7 section (a) shall not be deemed to be a waiver on be-
8 half of such entities of any applicable privilege or
9 protection.

10 (2) AVOIDANCE OF DESTRUCTION.—In estab-
11 lishing the Depository, procedures shall be imple-
12 mented to protect against the destruction of docu-
13 ments.

14 (3) DEEMED PRODUCED.—Any documents con-
15 tained in the Depository shall be deemed to have
16 been produced for purposes of any tobacco-related
17 litigation in the United States.

18 (f) DOCUMENTS.—For purposes of this section, the
19 term “documents” shall include any paper documents that
20 may be printed using data that is contained in computer
21 files.

1 **TITLE IX—ASSISTANCE TO TO-**
 2 **BACCO GROWERS AND COM-**
 3 **MUNITIES**

4 **SEC. 901. SHORT TITLE.**

5 This title may be cited as the “Long-Term Economic
 6 Assistance for Farmers Act” or the “LEAF Act”.

7 **SEC. 902. DEFINITIONS.**

8 In this title:

9 (1) **ACTIVE TOBACCO PRODUCER.**—The term
 10 “active tobacco producer” means a quota holder,
 11 quota lessee, or quota tenant.

12 (2) **QUOTA HOLDER.**—The term “quota holder”
 13 means a producer that owns a farm for which a to-
 14 bacco farm marketing quota or farm acreage allot-
 15 ment was established under the Agricultural Adjust-
 16 ment Act of 1938 (7 U.S.C. 1281 et seq.) for any
 17 of the 1994, 1995, or 1996 crop years.

18 (3) **QUOTA LESSEE.**—The term “quota lessee”
 19 means—

20 (A) a producer that owns a farm that pro-
 21 duced tobacco pursuant to a lease and transfer
 22 to that farm of all or part of a tobacco farm
 23 marketing quota or farm acreage allotment es-
 24 tablished under the Agricultural Adjustment

1 Act of 1938 (7 U.S.C. 1281 et seq.) for any of
2 the 1994, 1995, or 1996 crop years; or

3 ~~(B) a producer that rented land from a~~
4 ~~farm operator to produce tobacco under a to-~~
5 ~~bacco farm marketing quota or farm acreage al-~~
6 ~~lotment established under the Agricultural Ad-~~
7 ~~justment Act of 1938 (7 U.S.C. 1281 et seq.)~~
8 ~~for any of the 1994, 1995, or 1996 crop years.~~

9 ~~(4) QUOTA TENANT.—The term “quota tenant”~~
10 ~~means a producer who—~~

11 ~~(A) is the principal producer, as deter-~~
12 ~~mined by the Secretary, of tobacco on a farm~~
13 ~~where tobacco is produced pursuant to a to-~~
14 ~~bacco farm marketing quota or farm acreage al-~~
15 ~~lotment established under the Agricultural Ad-~~
16 ~~justment Act of 1938 (7 U.S.C. 1281 et seq.)~~
17 ~~for any of the 1994, 1995, or 1996 crop years;~~
18 ~~and~~

19 ~~(B) is not a quota holder or quota lessee.~~

20 ~~(5) SECRETARY.—The term “Secretary”~~
21 ~~means—~~

22 ~~(A) in titles I and II, the Secretary of Ag-~~
23 ~~riculture; and~~

24 ~~(B) in section 301, the Secretary of Labor.~~

1 (6) TOBACCO PRODUCT IMPORTER.—The term
2 “tobacco product importer” has the meaning given
3 the term “importer” in section 5702 of the Internal
4 Revenue Code of 1986.

5 (7) TOBACCO PRODUCT MANUFACTURER.—

6 (A) IN GENERAL.—The term “tobacco
7 product manufacturer” has the meaning given
8 the term “manufacturer of tobacco products” in
9 section 5702 of the Internal Revenue Code of
10 1986.

11 (B) EXCLUSION.—The term “tobacco
12 product manufacturer” does not include a per-
13 son that manufactures cigars or pipe tobacco.

14 (8) TRUST FUND.—The term “Trust Fund”
15 means the Tobacco Community Revitalization Trust
16 Fund established under section 101.

17 SUBTITLE A—TOBACCO COMMUNITY
18 REVITALIZATION TRUST FUND

19 **SEC. 911. ESTABLISHMENT OF TRUST FUND.**

20 (a) IN GENERAL.—There is established in the Treas-
21 ury of the United States a trust fund to be known as the
22 “Tobacco Community Revitalization Trust Fund”, con-
23 sisting of such amounts as may be appropriated or cred-
24 ited to the Trust Fund. The Trust Fund shall be adminis-
25 tered by the Secretary.

1 (b) TRANSFERS TO TRUST FUND.—There are appro-
 2 priated and transferred to the Trust Fund for each fiscal
 3 year—

4 (1) amounts contributed by tobacco product
 5 manufacturers and tobacco product importers under
 6 section 102; and

7 (2) amounts made available to the Trust Fund
 8 out of funds allocated through national tobacco set-
 9 tlement legislation.

10 (c) REPAYABLE ADVANCES.—

11 (1) AUTHORIZATION.—There are authorized to
 12 be appropriated to the Trust Fund, as repayable ad-
 13 vances, such sums as may from time to time be nec-
 14 essary to make expenditures under subsection (d).

15 (2) REPAYMENT WITH INTEREST.—Repayable
 16 advances made to the Trust Fund shall be repaid,
 17 and interest on the advances shall be paid, to the
 18 general fund of the Treasury when the Secretary of
 19 the Treasury determines that moneys are available
 20 in the Trust Fund to make the payments.

21 (3) RATE OF INTEREST.—Interest on an ad-
 22 vance made under this subsection shall be at a rate
 23 determined by the Secretary of Treasury (as of the
 24 close of the calendar month preceding the month in
 25 which the advance is made) that is equal to the cur-

1 rent average market yield on outstanding marketable
 2 obligations of the United States with remaining pe-
 3 riod to maturity comparable to the anticipated pe-
 4 riod during which the advance will be outstanding.

5 ~~(d) EXPENDITURES FROM TRUST FUND.—~~Amounts
 6 in the Trust Fund shall be available for making expendi-
 7 tures after October 1, 1998, to meet those necessary obli-
 8 gations of the Federal Government that are authorized to
 9 be paid under—

10 ~~(1)~~ section 201 for payments for lost tobacco
 11 quota for each of fiscal years 1999 through 2023,
 12 but not to exceed \$1,600,000,000 for any fiscal year
 13 except to the extent the payments are made in ac-
 14 cordance with section 201(j);

15 ~~(2)~~ section 202 for industry payments for all
 16 costs of the Department of Agriculture associated
 17 with the production of tobacco;

18 ~~(3)~~ section 203 for tobacco community eco-
 19 nomic development grants, but not to exceed—

20 ~~(A)~~ \$400,000,000 for each of fiscal years
 21 1999 through 2008, less any amount required
 22 to be paid under section 202 for the fiscal year;
 23 and

24 ~~(B)~~ \$450,000,000 for each of fiscal year
 25 2009 through 2023, less any amount required

1 to be paid under section 202 during the fiscal
2 year;

3 ~~(4) section 301 for assistance provided under~~
4 ~~the tobacco worker transition program, but not to~~
5 ~~exceed \$50,000,000 for any fiscal year; and~~

6 ~~(5) subpart 9 of part A of title IV of the High-~~
7 ~~er Education Act of 1965 for farmer opportunity~~
8 ~~grants, but not to exceed—~~

9 ~~(A) \$42,500,000 for each of the academic~~
10 ~~years 1999–2000 through 2003–2004;~~

11 ~~(B) \$50,000,000 for each of the academic~~
12 ~~years 2004–2005 through 2008–2009;~~

13 ~~(C) \$57,500,000 for each of the academic~~
14 ~~years 2009–2010 through 2013–2014;~~

15 ~~(D) \$65,000,000 for each of the academic~~
16 ~~years 2014–2015 through 2018–2019; and~~

17 ~~(E) \$72,500,000 for each of the academic~~
18 ~~years 2019–2020 through 2023–2024.~~

19 (e) BUDGETARY TREATMENT.—This section con-
20 stitutes budget authority in advance of appropriations
21 Acts and represents the obligation of the Federal Govern-
22 ment to provide payments to States and eligible persons
23 in accordance with this title.

1 **SEC. 912. CONTRIBUTIONS BY TOBACCO PRODUCT MANU-**
 2 **FACTURERS AND IMPORTERS.**

3 (a) **DEFINITION OF MARKET SHARE.**—In this sec-
 4 tion, the term “market share” means the ratio of—

5 (1) the tax liability of a tobacco product manu-
 6 facturer or tobacco product importer (as defined in
 7 section 2) for a calendar year under section 5703 of
 8 the Internal Revenue Code of 1986; to

9 (2) the tax liability of all tobacco product man-
 10 ufacturers or tobacco product importers (as defined
 11 in section 2) for the calendar year under section
 12 5703 of the Internal Revenue Code of 1986.

13 (b) **DETERMINATIONS.**—Not later than September
 14 30 of each fiscal year, the Secretary of the Treasury
 15 shall—

16 (1) determine—

17 (A) the market share of each tobacco prod-
 18 uct manufacturer or tobacco product importer
 19 during the most recent calendar year;

20 (B) the total amount of assessments pay-
 21 able for the subsequent fiscal year under sub-
 22 section (c); and

23 (C) the amount of an assessment payable
 24 by the tobacco product manufacturer or tobacco
 25 product importer for the fiscal year under sub-
 26 section (d); and

1 ~~(2)~~ notify each tobacco product manufacturer
 2 and tobacco product importer of the determinations
 3 made under paragraph ~~(1)~~ with respect to the manu-
 4 facturer or importer.

5 ~~(c)~~ TOTAL AMOUNT OF ASSESSMENTS.—

6 ~~(1)~~ IN GENERAL.—The total amount of assess-
 7 ments payable by all tobacco product manufacturers
 8 and tobacco product importers into the Trust Fund
 9 for a fiscal year shall be equal to—

10 ~~(A)~~ the amount of the contribution to the
 11 Trust Fund for the fiscal year required under
 12 paragraph ~~(2)~~; less

13 ~~(B)~~ any amount made available during the
 14 preceding fiscal year to the Trust Fund out of
 15 funds allocated through national tobacco settle-
 16 ment legislation.

17 ~~(2)~~ TRUST FUND CONTRIBUTIONS.—The
 18 amount of the contribution to the Trust Fund shall
 19 be—

20 ~~(A)~~ \$2,100,000,000 for each of fiscal years
 21 1999 through 2008;

22 ~~(B)~~ \$500,000,000 for each of fiscal years
 23 2009 through 2023; and

1 (C) for fiscal year 2024 and each subse-
 2 quent fiscal year, the amount payable under
 3 section 202.

4 (d) INDIVIDUAL AMOUNT OF ASSESSMENTS.—The
 5 amount of an assessment payable by each tobacco product
 6 manufacturer and tobacco product importer into the Trust
 7 Fund for a fiscal year shall be equal to the product ob-
 8 tained by multiplying—

9 (1) the total amount of assessments payable by
 10 all tobacco product manufacturers and tobacco prod-
 11 uct importers for the fiscal year under subsection
 12 (c); by

13 (2) the market share of the tobacco product
 14 manufacturer or tobacco product importer during
 15 the most recent calendar year determined under sub-
 16 section (b)(1)(A).

17 **SUBTITLE B—AGRICULTURAL**
 18 **MARKET TRANSITION ASSIST-**
 19 **ANCE**

20 **SEC. 921. PAYMENTS FOR LOST TOBACCO QUOTA.**

21 (a) IN GENERAL.—Beginning with the 1999 market-
 22 ing year, the Secretary shall make payments for lost to-
 23 bacco quota to eligible quota holders, quota lessees, and
 24 quota tenants as reimbursement for lost tobacco quota as

1 a result of a decrease in demand for domestically produced
2 tobacco.

3 (b) ELIGIBILITY.—To be eligible to receive payments
4 under this section, a quota holder, quota lessee, or quota
5 tenant shall—

6 (1) prepare and submit to the Secretary an ap-
7 plication at such time, in such manner, and contain-
8 ing such information as the Secretary may require,
9 including information sufficient to make the dem-
10 onstration required under paragraph (2); and

11 (2) demonstrate to the satisfaction of the Sec-
12 retary that, with respect to the 1996 marketing
13 year—

14 (A) the producer was a quota holder and
15 realized income from the production of tobacco
16 through—

17 (i) the active production of tobacco;

18 (ii) the lease and transfer of tobacco
19 quota to another farm;

20 (iii) the rental of all or part of the
21 farm of the quota holder, including the
22 right to produce tobacco, to another to-
23 bacco producer; or

24 (iv) the hiring of a quota tenant to
25 produce tobacco;

1 (B) the producer was a quota lessee; or

2 (C) the producer was a quota tenant.

3 (c) ~~BASE QUOTA LEVEL.~~—

4 (1) ~~IN GENERAL.~~—The Secretary shall deter-
5 mine, for each quota holder, quota lessee, and quota
6 tenant, the base quota level for the 1994 through
7 1996 marketing years.

8 (2) ~~QUOTA HOLDERS.~~—The base quota level for
9 a quota holder shall be equal to the average tobacco
10 farm marketing quota established for the farm
11 owned by the quota holder for the 1994 through
12 1996 marketing years.

13 (3) ~~QUOTA LESSEES.~~—The base quota level for
14 a quota lessee shall be equal to—

15 (A) ~~50~~ percent of the average number of
16 pounds of tobacco quota established for a farm
17 for the 1994 through 1996 marketing years—

18 (i) that was leased and transferred to
19 a farm owned by the quota lessee; or

20 (ii) for which the rights to produce
21 the tobacco were rented to the quota les-
22 see; less

23 (B) 25 percent of the average number of
24 pounds of tobacco quota described in paragraph

1 (A) for which a quota tenant was the principal
2 producer of the tobacco quota.

3 (4) QUOTA TENANTS.—The base quota level for
4 a quota tenant shall be equal to the sum of—

5 (A) 50 percent of the average number of
6 pounds of tobacco quota established for a farm
7 for the 1994 through 1996 marketing years—

8 (i) that was owned by a quota holder;
9 and

10 (ii) for which the quota tenant was
11 the principal producer of the tobacco on
12 the farm; and

13 (B) 25 percent of the average number of
14 pounds of tobacco quota for the 1994 through
15 1996 marketing years—

16 (i)(I) that was leased and transferred
17 to a farm owned by the quota lessee; or

18 (II) for which the rights to produce
19 the tobacco were rented to the quota les-
20 see; and

21 (ii) for which the quota tenant was
22 the principal producer of the tobacco on
23 the farm.

24 (5) MARKETING QUOTAS OTHER THAN POUND-
25 AGE QUOTAS.—For each kind of tobacco for which

1 there is a marketing quota or allotment (on an acre-
 2 age basis), the base quota level for each quota hold-
 3 er, quota lessee, or quota tenant shall be determined
 4 in accordance with this subsection (based on a
 5 poundage conversion) in an amount equal to the
 6 product obtained by multiplying—

7 (A) the average tobacco farm marketing
 8 quota or allotment for the 1994 through 1996
 9 marketing years; by

10 (B) the average county yield per acre for
 11 the county in which the farm is located for the
 12 kind of tobacco for the marketing years.

13 (d) PAYMENTS.—Except as otherwise provided in this
 14 section, during any marketing year in which the national
 15 marketing quota for a kind of tobacco is less than the av-
 16 erage national marketing quota level for the kind of to-
 17 bacco for the 1994 through 1996 marketing years, the
 18 Secretary shall make payments for lost tobacco quota to
 19 each quota holder, quota lessee, and quota tenant that is
 20 eligible under subsection (b) in an amount that is equal
 21 to the product obtained by multiplying—

22 (1) the percentage by which the national mar-
 23 keting quota for the kind of tobacco is less than the
 24 average national marketing quota level for the kind

1 of tobacco for the 1994 through 1996 marketing
 2 years; by

3 ~~(2) the base quota level for the quota holder,~~
 4 ~~quota lessee, or quota tenant; by~~

5 ~~(3) \$4 per pound.~~

6 ~~(c) LIFETIME LIMITATION ON PAYMENTS.—Except~~
 7 ~~as otherwise provided in this section, the total amount of~~
 8 ~~payments made under this section to a quota holder, quota~~
 9 ~~lessee, or quota tenant during the lifetime of the holder,~~
 10 ~~lessee, or tenant shall not exceed the product obtained by~~
 11 ~~multiplying—~~

12 ~~(1) the base quota level for the quota holder,~~
 13 ~~quota lessee, or quota tenant; by~~

14 ~~(2) \$8 per pound.~~

15 ~~(f) LIMITATIONS ON AGGREGATE ANNUAL PAY-~~
 16 ~~MENTS.—~~

17 ~~(1) IN GENERAL.—Except as otherwise pro-~~
 18 ~~vided in this subsection, the total amount payable~~
 19 ~~under this section for any marketing year shall not~~
 20 ~~exceed \$1,600,000,000.~~

21 ~~(2) ACCELERATED PAYMENTS.—Paragraph (1)~~
 22 ~~shall not apply if accelerated payments for lost to-~~
 23 ~~bacco quota are made in accordance with subsection~~
 24 ~~(j).~~

1 (3) REDUCTIONS.—If the amount determined
 2 under subsection (d) for a marketing year exceeds
 3 the amount described in paragraph (1), the Sec-
 4 retary shall make a pro rata reduction in the
 5 amounts payable to quota holders, quota lessees, and
 6 quota tenants under this section to ensure that the
 7 total amount of the payments for lost tobacco quota
 8 does not exceed the limitation established under
 9 paragraph (1).

10 (4) ROLLOVER OF PAYMENTS FOR LOST TO-
 11 BACCO QUOTA.—Subject to paragraph (1), if the
 12 Secretary makes a reduction in accordance with
 13 paragraph (3), the amount of the reduction shall be
 14 applied to the next marketing year and added to the
 15 payments for lost tobacco for the marketing year.

16 (g) SUBSEQUENT SALE AND TRANSFER OF
 17 QUOTA.—Effective beginning January 1, 1999, on the
 18 sale and transfer of a farm marketing quota under section
 19 316(g) or 319(g) of the Agricultural Adjustment Act of
 20 1938 (7 U.S.C. 1314b(g), 1314e(g))—

21 (1) the person who sold and transferred the
 22 quota shall have—

23 (A) the base quota level attributable to the
 24 person reduced by the base quota level attrib-

1 utable to the quota that is sold and transferred;
2 and

3 ~~(B) the lifetime limitation on payments es-~~
4 ~~tablished under subsection (c) attributable to~~
5 ~~the person reduced by the product obtained by~~
6 ~~multiplying—~~

7 (i) the base quota level attributable to
8 the quota; by

9 (ii) \$8 per pound; and

10 ~~(2) the person who acquired the quota shall~~
11 ~~have—~~

12 ~~(A) the base quota level attributable to the~~
13 ~~person increased by the base quota level attrib-~~
14 ~~utable to the quota that was sold and trans-~~
15 ~~ferred; and~~

16 ~~(B) the lifetime limitation on payments es-~~
17 ~~tablished under subsection (c) attributable to~~
18 ~~the person—~~

19 (i) increased by the product obtained
20 by multiplying—

21 ~~(I) the base quota level attrib-~~
22 ~~utable to the quota; by~~

23 ~~(II) \$8 per pound; but~~

24 (ii) decreased by any payments for
25 lost tobacco quota previously made that

1 are attributable to the quota that was sold
2 and transferred.

3 (h) SALE OR TRANSFER OF FARM.—On the sale or
4 transfer of ownership of a farm that is owned by a quota
5 holder, the base quota level established under subsection
6 (e), the right to payments under subsection (d), and the
7 lifetime limitation on payments established under sub-
8 section (e) shall transfer to the new owner of the farm
9 to the same extent and in the same manner as those sub-
10 sections applied to the previous quota holder.

11 (i) DEATH OF QUOTA LESSEE OR QUOTA TENANT.—
12 If a quota lessee or quota tenant who is entitled to pay-
13 ments under this section dies and is survived by a spouse
14 or 1 or more dependents, the right to receive the payments
15 shall transfer to the surviving spouse or, if there is no
16 surviving spouse, to the surviving dependents in equal
17 shares.

18 (j) ACCELERATION OF PAYMENTS.—

19 (1) IN GENERAL.—On the occurrence of any of
20 the events described in paragraph (2), the Secretary
21 shall make an accelerated lump sum payment for
22 lost tobacco quota to each quota holder, quota les-
23 see, and quota tenant for any affected kind of to-
24 bacco in accordance with paragraph (3).

(2) TRIGGERING EVENTS.—The Secretary shall make accelerated payments under paragraph (1) if after the date of enactment of this title—

(A) for 3 consecutive marketing years, the national marketing quota for a kind of tobacco is less than 50 percent of the national marketing quota for the kind of tobacco for the 1996 marketing year; or

(B) Congress repeals or makes ineffective, directly or indirectly, any provision of—

(i) section 316(g) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314b(g));

(ii) section 319(g) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314c(g));

(iii) section 106 of the Agricultural Act of 1949 (7 U.S.C. 1445);

(iv) section 106A of the Agricultural Act of 1949 (7 U.S.C. 1445–1); or

(v) section 106B of the Agricultural Act of 1949 (7 U.S.C. 1445–2).

(3) AMOUNT.—The amount of the accelerated payments made to each quota holder, quota lessee,

1 and quota tenant under this subsection shall be
2 equal to—

3 ~~(A)~~ the amount of the lifetime limitation
4 established for the quota holder, quota lessee,
5 or quota tenant under subsection (e); less

6 ~~(B)~~ any payments for lost tobacco quota
7 received by the quota holder, quota lessee, or
8 quota tenant before the occurrence of any of
9 the events described in paragraph ~~(2)~~.

10 **SEC. 922. INDUSTRY PAYMENTS FOR ALL DEPARTMENT**
11 **COSTS ASSOCIATED WITH TOBACCO PRODUC-**
12 **TION.**

13 ~~(a)~~ IN GENERAL.—The Secretary shall use such
14 amounts as are necessary from the Trust Fund at the end
15 of each fiscal year to reimburse the Secretary for—

16 ~~(1)~~ costs associated with the administration of
17 programs established under this title and amend-
18 ments made by this title;

19 ~~(2)~~ costs associated with the administration of
20 the tobacco quota and price support programs ad-
21 ministered by the Secretary;

22 ~~(3)~~ costs to the Federal Government of carrying
23 out crop insurance programs for tobacco;

1 (4) costs associated with all agricultural re-
 2 search, extension, or education activities associated
 3 with tobacco;

4 (5) costs associated with the administration of
 5 loan association and cooperative programs for to-
 6 bacco producers, as approved by the Secretary; and

7 (6) any other costs incurred by the Department
 8 of Agriculture associated with the production of to-
 9 bacco.

10 (b) LIMITATIONS.—Amounts made available under
 11 subsection (a) may not be used—

12 (1) to provide direct benefits to quota holders,
 13 quota lessees, or quota tenants; or

14 (2) in a manner that results in a decrease, or
 15 an increase relative to other crops, in the amount of
 16 the crop insurance premiums assessed to active to-
 17 bacco producers under the Federal Crop Insurance
 18 Act (7 U.S.C. 1501 et seq.).

19 (c) DETERMINATIONS.—Not later than September
 20 30, 1998, and each fiscal year thereafter, the Secretary
 21 shall determine—

22 (1) the amount of costs described in subsection
 23 (a); and

24 (2) the amount that will be provided under this
 25 section as reimbursement for the costs.

1 **SEC. 923. TOBACCO COMMUNITY ECONOMIC DEVELOP-**
 2 **MENT GRANTS.**

3 (a) **AUTHORITY.**—The Secretary shall make grants to
 4 tobacco-growing States in accordance with this section to
 5 enable the States to carry out economic development ini-
 6 tiatives in tobacco-growing communities.

7 (b) **APPLICATION.**—To be eligible to receive payments
 8 under this section, a State shall prepare and submit to
 9 the Secretary an application at such time, in such manner,
 10 and containing such information as the Secretary may re-
 11 quire, including—

12 (1) a description of the activities that the State
 13 will carry out using amounts received under the
 14 grant;

15 (2) a designation of an appropriate State agen-
 16 cy to administer amounts received under the grant;
 17 and

18 (3) a description of the steps to be taken to en-
 19 sure that the funds are distributed in accordance
 20 with subsection (c).

21 (c) **AMOUNT OF GRANT.**—

22 (1) **IN GENERAL.**—From the amounts available
 23 to carry out this section for a fiscal year, the Sec-
 24 retary shall allot to each State an amount that bears
 25 the same ratio to the amounts available as the total
 26 income of the State derived from the production of

1 tobacco during the 1994 through 1996 marketing
2 years (as determined under paragraph (2)) bears to
3 the total income of all States derived from the pro-
4 duction of tobacco during the 1994 through 1996
5 marketing years.

6 (2) TOBACCO INCOME.—For the 1994 through
7 1996 marketing years, the Secretary shall determine
8 the amount of income derived from the production
9 of tobacco in each State and in all States.

10 (d) PAYMENTS.—

11 (1) IN GENERAL.—A State that has an applica-
12 tion approved by the Secretary under subsection (b)
13 shall be entitled to a payment under this section in
14 an amount that is equal to its allotment under sub-
15 section (c).

16 (2) FORM OF PAYMENTS.—The Secretary may
17 make payments under this section to a State in in-
18 stallments, and in advance or by way of reimburse-
19 ment, with necessary adjustments on account of
20 overpayments or underpayments, as the Secretary
21 may determine.

22 (3) REALLOTMENTS.—Any portion of the allot-
23 ment of a State under subsection (c) that the Sec-
24 retary determines will not be used to carry out this
25 section in accordance with an approved State appli-

1 eation required under subsection (b), shall be reallocot-
 2 ted by the Secretary to other States in proportion to
 3 the original allotments to the other States.

4 ~~(e) USE AND DISTRIBUTION OF FUNDS.—~~

5 ~~(1) IN GENERAL.—~~Amounts received by a State
 6 under this section shall be used to carry out eco-
 7 nomic development activities, including—

8 ~~(A)~~ rural business enterprise activities de-
 9 scribed in subsections ~~(c)~~ and ~~(c)~~ of section
 10 ~~310B~~ of the Consolidated Farm and Rural De-
 11 velopment Act (~~7 U.S.C. 1932~~);

12 ~~(B)~~ down payment loan assistance pro-
 13 grams that are similar to the program described
 14 in section ~~310E~~ of the Consolidated Farm and
 15 Rural Development Act (~~7 U.S.C. 1935~~);

16 ~~(C)~~ activities designed to help create pro-
 17 ductive farm or off-farm employment in rural
 18 areas to provide a more viable economic base
 19 and enhance opportunities for improved in-
 20 comes, living standards, and contributions by
 21 rural individuals to the economic and social de-
 22 velopment of tobacco communities;

23 ~~(D)~~ activities that expand existing infra-
 24 structure, facilities, and services to capitalize on
 25 opportunities to diversify economies in tobacco

communities and that support the development of new industries or commercial ventures;

(E) activities by agricultural organizations that provide assistance directly to active tobacco producers to assist in developing other agricultural activities that supplement tobacco-producing activities;

(F) initiatives designed to create or expand locally owned value-added processing and marketing operations in tobacco communities; and

(G) technical assistance activities by persons to support farmer-owned enterprises, or agriculture-based rural development enterprises, of the type described in section 252 or 253 of the Trade Act of 1974 (19 U.S.C. 2342, 2343).

(2) TOBACCO-GROWING COUNTIES.—Assistance may be provided by a State under this section only to assist a county in the State that has been determined by the Secretary to have in excess of \$100,000 in income derived from the production of tobacco during 1 or more of the 1994 through 1996 marketing years.

(3) DISTRIBUTION.—

(A) ECONOMIC DEVELOPMENT ACTIVITIES.—Not less than 20 percent of the amounts

received by a State under this section shall be
used to carry out—

(i) economic development activities described in subparagraph (E) or (F) of paragraph (1); or

(ii) agriculture-based rural development activities described in paragraph (1)(G).

(B) TECHNICAL ASSISTANCE ACTIVITIES.—Not less than 4 percent of the amounts received by a State under this section shall be used to carry out technical assistance activities described in paragraph (1)(G).

(C) TOBACCO-GROWING COUNTIES.—To be eligible to receive payments under this section, a State shall demonstrate to the Secretary that funding will be provided, during each 5-year period for which funding is provided under this section, for activities in each county in the State that has been determined under paragraph (2) to have in excess of \$100,000 in income derived from the production of tobacco, in amounts that are at least equal to the product obtained by multiplying—

1 (i) the ratio that the tobacco produc-
 2 tion income in the county determined
 3 under paragraph (2) bears to the total to-
 4 bacco production income for the State de-
 5 termined under subsection (c); by

6 (ii) 50 percent of the total amounts
 7 received by a State under this section dur-
 8 ing the 5-year period.

9 (f) PREFERENCES IN HIRING.—A State may require
 10 recipients of funds under this section to provide a pref-
 11 erence in employment to—

12 (1) an individual who—

13 (A) during the 1996 calendar year, was
 14 employed in the manufacture, processing, or
 15 warehousing of tobacco or tobacco products; or
 16 resided, in a county described in subsection
 17 (e)(2); and

18 (B) is eligible for assistance under the to-
 19 bacco worker transition program established
 20 under section 301; or

21 (2) an individual who—

22 (A) during the 1996 marketing year, ear-
 23 ned out tobacco quota or relevant tobacco pro-
 24 duction activities in a county described in sub-
 25 section (e)(2);

(B) is eligible for a farmer opportunity grant under subpart 9 of part A of title IV of the Higher Education Act of 1965; and

(C) has successfully completed a course of study at an institution of higher education.

SEC. 924. MODIFICATIONS IN FEDERAL TOBACCO PROGRAMS.

(a) PROGRAM REFERENDA.—Section 312(c) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1312(c)) is amended—

(1) by striking “(c) Within thirty” and inserting the following:

“(c) REFERENDA ON QUOTAS.—

“(1) IN GENERAL.—Not later than 30”; and

(2) by adding at the end the following:

“(2) REFERENDA ON PROGRAM CHANGES.—

“(A) IN GENERAL.—In the case of any kind of tobacco for which marketing quotas are in effect, on the receipt of a petition from more than 5 percent of the producers of that kind of tobacco in a State, the Secretary shall conduct a statewide referendum on any proposal related to the lease and transfer of tobacco quota within a State requested by the petition that is authorized under this part.

1 “(B) APPROVAL OF PROPOSALS.—If a ma-
 2 jority of producers of the kind of tobacco in the
 3 State approve a proposal in a referendum con-
 4 ducted under subparagraph (A), the Secretary
 5 shall implement the proposal in a manner that
 6 applies to all producers and quota holders of
 7 that kind of tobacco in the State.”.

8 (b) PURCHASE REQUIREMENTS.—Section 320B of
 9 the Agricultural Adjustment Act of 1938 (7 U.S.C.
 10 1314h) is amended—

11 (1) in subsection (c), by striking paragraph (1)
 12 and inserting the following:

13 “(1) 105 percent of the average market price
 14 for the kind of tobacco involved during the preceding
 15 marketing year; by”;

16 (2) by striking subsection (d) and inserting the
 17 following:

18 “(d) USE OF PENALTY PAYMENTS.—An amount
 19 equivalent to each penalty collected by the Secretary under
 20 this section shall be transmitted by the Secretary to the
 21 Secretary of the Treasury for deposit in the Tobacco Com-
 22 munity Revitalization Trust Fund established under sec-
 23 tion 101 of the LEAF Act.”.

24 (c) ELIMINATION OF TOBACCO MARKETING ASSESS-
 25 MENT.—

1 (1) IN GENERAL.—Section 106 of the Agricul-
 2 tural Act of 1949 (7 U.S.C. 1445(g)) is amended by
 3 striking subsection (g):

4 (2) CONFORMING AMENDMENT.—Section
 5 422(e) of the Uruguay Round Agreements Act (Pub-
 6 lic Law 103–465; 7 U.S.C. 1445 note) is amended
 7 by striking “section 106(g), 106A, or 106B of the
 8 Agricultural Act of 1949 (7 U.S.C. 1445(g), 1445–
 9 1, or 1445–2)” and inserting “section 106A or
 10 106B of the Agricultural Act of 1949 (7 U.S.C.
 11 1445–1, 1445–2)”.

12 **SUBTITLE C—FARMER AND**
 13 **WORKER TRANSITION ASSIST-**
 14 **ANCE**

15 **SEC. 931. TOBACCO WORKER TRANSITION PROGRAM.**

16 (a) GROUP ELIGIBILITY REQUIREMENTS.—

17 (1) CRITERIA.—A group of workers (including
 18 workers in any firm or subdivision of a firm involved
 19 in the manufacture, processing, or warehousing of
 20 tobacco or tobacco products) shall be certified as eli-
 21 gible to apply for adjustment assistance under this
 22 section pursuant to a petition filed under subsection
 23 (b) if the Secretary of Labor determines that a sig-
 24 nificant number or proportion of the workers in such
 25 workers’ firm or an appropriate subdivision of the

1 firm have become totally or partially separated, or
 2 are threatened to become totally or partially separated,
 3 rated, and—

4 (A) the sales or production, or both, of
 5 such firm or subdivision have decreased absolutely,
 6 and

7 (B) the implementation of the national tobacco
 8 settlement contributed importantly to
 9 such workers' separation or threat of separation
 10 and to the decline in the sales or production of
 11 such firm or subdivision.

12 (2) DEFINITION OF CONTRIBUTED IMPORTANTLY.—In paragraph (1)(B), the term “contributed importantly” means a cause that is important
 13 but not necessarily more important than any other
 14 cause.
 15

16 (3) REGULATIONS.—The Secretary shall issue
 17 regulations relating to the application of the criteria
 18 described in paragraph (1) in making preliminary
 19 findings under subsection (b) and determinations
 20 under subsection (c).
 21

22 (b) PRELIMINARY FINDINGS AND BASIC ASSISTANCE.—
 23

24 (1) FILING OF PETITIONS.—A petition for certification of eligibility to apply for adjustment assist-
 25

1 ance under this section may be filed by a group of
2 workers (including workers in any firm or subdivi-
3 sion of a firm involved in the manufacture, process-
4 ing, or warehousing of tobacco or tobacco products)
5 or by their certified or recognized union or other
6 duly authorized representative with the Governor of
7 the State in which such workers' firm or subdivision
8 thereof is located.

9 (2) FINDINGS AND ASSISTANCE.—Upon receipt
10 of a petition under paragraph (1), the Governor
11 shall—

12 (A) notify the Secretary that the Governor
13 has received the petition;

14 (B) within 10 days after receiving the peti-
15 tion—

16 (i) make a preliminary finding as to
17 whether the petition meets the criteria de-
18 scribed in subsection (a)(1); and

19 (ii) transmit the petition, together
20 with a statement of the finding under
21 clause (i) and reasons for the finding, to
22 the Secretary for action under subsection
23 (e); and

24 (C) if the preliminary finding under sub-
25 paragraph (B)(i) is affirmative, ensure that

1 rapid response and basic readjustment services
2 authorized under other Federal laws are made
3 available to the workers.

4 ~~(c) REVIEW OF PETITIONS BY SECRETARY; CERTIFI-~~
5 ~~CATIONS.—~~

6 ~~(1) IN GENERAL.—~~The Secretary, within 30
7 days after receiving a petition under subsection
8 ~~(b)(2)(B)(ii)~~, shall determine whether the petition
9 meets the criteria described in subsection ~~(a)(1)~~.
10 Upon a determination that the petition meets such
11 criteria, the Secretary shall issue to workers covered
12 by the petition a certification of eligibility to apply
13 for the assistance described in subsection ~~(d)~~.

14 ~~(2) DENIAL OF CERTIFICATION.—~~Upon the de-
15 nial of a certification with respect to a petition
16 under paragraph ~~(1)~~, the Secretary shall review the
17 petition in accordance with the requirements of
18 other applicable assistance programs to determine if
19 the workers may be certified under such other provi-
20 sions.

21 ~~(d) COMPREHENSIVE ASSISTANCE.—~~

22 ~~(1) IN GENERAL.—~~Workers covered by a certifi-
23 cation issued by the Secretary under subsection
24 ~~(c)(1)~~ shall be provided with benefits and services
25 described in paragraph ~~(2)~~ in the same manner and

1 to the same extent as workers covered under a cer-
 2 tification under subchapter A of title II of the Trade
 3 Act of 1974 (~~19 U.S.C. 2271 et seq.~~); except that
 4 the total amount of payments under this section for
 5 any fiscal year shall not exceed \$50,000,000.

6 ~~(2) BENEFITS AND SERVICES.~~—The benefits
 7 and services described in this paragraph are the fol-
 8 lowing:

9 ~~(A) Employment services of the type de-~~
 10 ~~scribed in section 235 of the Trade Act of 1974~~
 11 ~~(19 U.S.C. 2295).~~

12 ~~(B) Training described in section 236 of~~
 13 ~~the Trade Act of 1974 (19 U.S.C. 2296), ex-~~
 14 ~~cept that notwithstanding the provisions of sec-~~
 15 ~~tion 236(a)(2)(A) of such Act, the total amount~~
 16 ~~of payments for training under this section for~~
 17 ~~any fiscal year shall not exceed \$25,000,000.~~

18 ~~(C) Tobacco worker readjustment allow-~~
 19 ~~ances, which shall be provided in the same man-~~
 20 ~~ner as trade readjustment allowances are pro-~~
 21 ~~vided under part I of subchapter B of chapter~~
 22 ~~2 of title II of the Trade Act of 1974 (19~~
 23 ~~U.S.C. 2291 et seq.); except that—~~

24 ~~(i) the provisions of sections~~
 25 ~~231(a)(5)(C) and 231(c) of such Act (19~~

U.S.C. 2291(a)(5)(C), 2291(c)), authorizing the payment of trade readjustment allowances upon a finding that it is not feasible or appropriate to approve a training program for a worker, shall not be applicable to payment of allowances under this section; and

(ii) notwithstanding the provisions of section 233(b) of such Act (19 U.S.C. 2293(b)), in order for a worker to qualify for tobacco readjustment allowances under this section, the worker shall be enrolled in a training program approved by the Secretary of the type described in section 236(a) of such Act (19 U.S.C. 2296(a)) by the later of—

(I) the last day of the 16th week of such worker's initial unemployment compensation benefit period; or

(II) the last day of the 6th week after the week in which the Secretary issues a certification covering such worker.

In cases of extenuating circumstances relating to enrollment of a worker in a train-

1 ing program under this section, the Sec-
 2 retary may extend the time for enrollment
 3 for a period of not to exceed 30 days.

4 (D) Job search allowances of the type de-
 5 scribed in section 237 of the Trade Act of 1974
 6 (19 U.S.C. 2297).

7 (E) Relocation allowances of the type de-
 8 scribed in section 238 of the Trade Act of 1974
 9 (19 U.S.C. 2298).

10 (e) INELIGIBILITY OF INDIVIDUALS RECEIVING PAY-
 11 MENTS FOR LOST TOBACCO QUOTA.—No benefits or serv-
 12 ices may be provided under this section to any individual
 13 who has received payments for lost tobacco quota under
 14 section 201.

15 (f) FUNDING.—Of the amounts in the Trust Fund,
 16 the Secretary may use not to exceed \$50,000,000 for each
 17 of fiscal years 1999 through 2008 to provide assistance
 18 under this section.

19 (g) EFFECTIVE DATE.—This section shall take effect
 20 on the date that is the later of—

21 (1) October 1, 1998; or

22 (2) the date on which legislation implementing
 23 the national tobacco settlement is enacted.

1 (h) ~~TERMINATION DATE.~~—No assistance, vouchers,
2 allowances, or other payments may be provided under this
3 section after the date that is the earlier of—

4 (1) the date that is 10 years after the effective
5 date of this section under subsection (g); or

6 (2) the date on which legislation establishing a
7 program providing dislocated workers with com-
8 prehensive assistance substantially similar to the as-
9 sistance provided by this section becomes effective.

10 **SEC. 932. FARMER OPPORTUNITY GRANTS.**

11 Part A of title IV of the Higher Education Act of
12 1965 (20 U.S.C. 1070 et seq.) is amended by adding at
13 the end the following:

14 **“Subpart 9—Farmer Opportunity Grants**

15 **“SEC. 420D. STATEMENT OF PURPOSE.**

16 “‘It is the purpose of this subpart to assist in making
17 available the benefits of postsecondary education to eligi-
18 ble students (determined in accordance with section 420F)
19 in institutions of higher education by providing farmer op-
20 portunity grants to all eligible students.

21 **“SEC. 420E. PROGRAM AUTHORITY; AMOUNT AND DETER-**
22 **MINATIONS; APPLICATIONS.**

23 “(a) ~~PROGRAM AUTHORITY AND METHOD OF~~
24 ~~DISTRIBUTION.~~—

1 “(1) PROGRAM AUTHORITY.—From amounts
2 made available under section 101(d)(5) of the LEAF
3 Act, the Secretary, during the period beginning July
4 1, 1999, and ending September 30, 2024, shall pay
5 to each eligible institution such sums as may be nec-
6 essary to pay to each eligible student (determined in
7 accordance with section 420F) for each academic
8 year during which that student is in attendance at
9 an institution of higher education, as an under-
10 graduate, a farmer opportunity grant in the amount
11 for which that student is eligible, as determined pur-
12 suant to subsection (b). Not less than 85 percent of
13 such sums shall be advanced to eligible institutions
14 prior to the start of each payment period and shall
15 be based upon an amount requested by the institu-
16 tion as needed to pay eligible students, except that
17 this sentence shall not be construed to limit the au-
18 thority of the Secretary to place an institution on a
19 reimbursement system of payment.

20 “(2) CONSTRUCTION.—Nothing in this section
21 shall be construed to prohibit the Secretary from
22 paying directly to students, in advance of the begin-
23 ning of the academic term, an amount for which the
24 students are eligible, in cases where the eligible in-

stitution elects not to participate in the disbursement system required by paragraph (1).

~~“(3) DESIGNATION.—~~Grants made under this subpart shall be known as ‘farmer opportunity grants’.

~~“(b) AMOUNT OF GRANTS.—~~

~~“(1) AMOUNTS.—~~

~~“(A) IN GENERAL.—~~The amount of the grant for a student eligible under this subpart shall be—

~~“(i) \$1,700 for each of the academic years 1999–2000 through 2003–2004;~~

~~“(ii) \$2,000 for each of the academic years 2004–2005 through 2008–2009;~~

~~“(iii) \$2,300 for each of the academic years 2009–2010 through 2013–2014;~~

~~“(iv) \$2,600 for each of the academic years 2014–2015 through 2018–2019; and~~

~~“(v) \$2,900 for each of the academic years 2019–2020 through 2023–2024.~~

~~“(B) PART-TIME RULE.—~~In any case where a student attends an institution of higher education on less than a full-time basis (including a student who attends an institution of higher education on less than a half-time basis)

during any academic year, the amount of the grant for which that student is eligible shall be reduced in proportion to the degree to which that student is not so attending on a full-time basis, in accordance with a schedule of reductions established by the Secretary for the purposes of this subparagraph, computed in accordance with this subpart. Such schedule of reductions shall be established by regulation and published in the Federal Register.

“(2) MAXIMUM.—No grant under this subpart shall exceed the cost of attendance (as described in section 472) at the institution at which that student is in attendance. If, with respect to any student, it is determined that the amount of a grant exceeds the cost of attendance for that year, the amount of the grant shall be reduced to an amount equal to the cost of attendance at such institution.

“(3) PROHIBITION.—No grant shall be awarded under this subpart to any individual who is incarcerated in any Federal, State, or local penal institution.

“(c) PERIOD OF ELIGIBILITY FOR GRANTS.—

“(1) IN GENERAL.—The period during which a student may receive grants shall be the period required for the completion of the first undergraduate

1 baccalaureate course of study being pursued by that
2 student at the institution at which the student is in
3 attendance, except that any period during which the
4 student is enrolled in a noncredit or remedial course
5 of study as described in paragraph (2) shall not be
6 counted for the purpose of this paragraph.

7 “(2) CONSTRUCTION.—Nothing in this section
8 shall be construed to—

9 “(A) exclude from eligibility courses of
10 study that are noncredit or remedial in nature
11 and that are determined by the institution to be
12 necessary to help the student be prepared for
13 the pursuit of a first undergraduate baccalaureate degree or certificate or, in the case of
14 courses in English language instruction, to be
15 necessary to enable the student to utilize already existing knowledge, training, or skills;
16 and
17 and
18 and

19 “(B) exclude from eligibility programs of
20 study abroad that are approved for credit by
21 the home institution at which the student is
22 enrolled.

23 “(3) PROHIBITION.—No student is entitled to
24 receive farmer opportunity grant payments concur-

1 rently from more than 1 institution or from the Sec-
 2 retary and an institution.

3 ~~“(d) APPLICATIONS FOR GRANTS.—~~

4 ~~“(1) IN GENERAL.—~~The Secretary shall from
 5 time to time set dates by which students shall file
 6 applications for grants under this subpart. The filing
 7 of applications under this subpart shall be coordi-
 8 nated with the filing of applications under section
 9 401(e).

10 ~~“(2) INFORMATION AND ASSURANCES.—~~Each
 11 student desiring a grant for any year shall file with
 12 the Secretary an application for the grant containing
 13 such information and assurances as the Secretary
 14 may deem necessary to enable the Secretary to carry
 15 out the Secretary’s functions and responsibilities
 16 under this subpart.

17 ~~“(e) DISTRIBUTION OF GRANTS TO STUDENTS.—~~

18 Payments under this section shall be made in accordance
 19 with regulations promulgated by the Secretary for such
 20 purpose, in such manner as will best accomplish the pur-
 21 pose of this section. Any disbursement allowed to be made
 22 by crediting the student’s account shall be limited to tui-
 23 tion and fees and, in the case of institutionally owned
 24 housing, room and board. The student may elect to have

1 the institution provide other such goods and services by
 2 crediting the student's account.

3 “(f) INSUFFICIENT FUNDING.—If, for any fiscal
 4 year, the funds made available to carry out this subpart
 5 from the Tobacco Community Revitalization Trust Fund
 6 are insufficient to satisfy fully all grants for students de-
 7 termined to be eligible under section 420F, the amount
 8 of the grant provided under subsection (b) shall be re-
 9 duced on a pro rata basis among all eligible students.

10 “(g) TREATMENT OF INSTITUTIONS AND STUDENTS
 11 UNDER OTHER LAWS.—Any institution of higher edu-
 12 cation that enters into an agreement with the Secretary
 13 to disburse to students attending that institution the
 14 amounts those students are eligible to receive under this
 15 subpart shall not be deemed, by virtue of such agreement,
 16 to be a contractor maintaining a system of records to ac-
 17 complish a function of the Secretary. Recipients of farmer
 18 opportunity grants shall not be considered to be individual
 19 grantees for purposes of the Drug-Free Workplace Act of
 20 1988 (41 U.S.C. 701 et seq.).

21 **“SEC. 420F. STUDENT ELIGIBILITY.**

22 “(a) IN GENERAL.—In order to receive any grant
 23 under this subpart, a student shall—

24 “(1) be a member of a tobacco farm family in
 25 accordance with subsection (b);

1 ~~“(2) be enrolled or accepted for enrollment in~~
2 ~~a degree, certificate, or other program (including a~~
3 ~~program of study abroad approved for credit by the~~
4 ~~eligible institution at which such student is enrolled)~~
5 ~~leading to a recognized educational credential at an~~
6 ~~institution of higher education that is an eligible in-~~
7 ~~stitution in accordance with section 487, and not be~~
8 ~~enrolled in an elementary or secondary school;~~

9 ~~“(3) if the student is presently enrolled at an~~
10 ~~institution of higher education, be maintaining satis-~~
11 ~~factory progress in the course of study the student~~
12 ~~is pursuing in accordance with subsection (c);~~

13 ~~“(4) not owe a refund on grants previously re-~~
14 ~~ceived at any institution of higher education under~~
15 ~~this title, or be in default on any loan from a stu-~~
16 ~~dent loan fund at any institution provided for in~~
17 ~~part D, or a loan made, insured, or guaranteed by~~
18 ~~the Secretary under this title for attendance at any~~
19 ~~institution;~~

20 ~~“(5) file with the institution of higher education~~
21 ~~that the student intends to attend, or is attending,~~
22 ~~a document, that need not be notarized, but that~~
23 ~~shall include—~~

24 ~~“(A) a statement of educational purpose~~
25 ~~stating that the money attributable to such~~

grant will be used solely for expenses related to attendance or continued attendance at such institution; and

“(B) such student’s social security number; and

“(6) be a citizen of the United States.

“(b) TOBACCO FARM FAMILIES.—

“(1) IN GENERAL.—For the purpose of subsection (a)(1), a student is a member of a tobacco farm family if during calendar year 1996 the student was—

“(A) an individual who—

“(i) is an active tobacco producer (as defined in section 2 of the LEAF Act); or

“(ii) is otherwise actively engaged in the production of tobacco;

“(B) a spouse, son, daughter, stepson, or stepdaughter of an individual described in subparagraph (A);

“(C) an individual—

“(i) who was a brother, sister, stepbrother, stepsister, son-in-law, or daughter-in-law of an individual described in subparagraph (A); and

1 “(ii) whose principal place of resi-
 2 dence was the home of the individual de-
 3 scribed in subparagraph (A); or

4 “(D) an individual who was a dependent
 5 (within the meaning of section 152 of the Inter-
 6 nal Revenue Code of 1986) of an individual de-
 7 scribed in subparagraph (A).

8 “(2) ADMINISTRATION.—On request, the Sec-
 9 retary of Agriculture shall provide to the Secretary
 10 such information as is necessary to carry out this
 11 subsection.

12 “(c) SATISFACTORY PROGRESS.—

13 “(1) IN GENERAL.—For the purpose of sub-
 14 section (a)(3), a student is maintaining satisfactory
 15 progress if—

16 “(A) the institution at which the student is
 17 in attendance reviews the progress of the stu-
 18 dent at the end of each academic year, or its
 19 equivalent, as determined by the institution;
 20 and

21 “(B) the student has at least a cumulative
 22 C average or its equivalent, or academic stand-
 23 ing consistent with the requirements for grad-
 24 uation, as determined by the institution, at the
 25 end of the second such academic year.

1 ~~“(2) SPECIAL RULE.—~~Whenever a student fails
 2 to meet the eligibility requirements of subsection
 3 ~~(a)(3)~~ as a result of the application of this sub-
 4 section and subsequent to that failure the student
 5 has academic standing consistent with the require-
 6 ments for graduation, as determined by the institu-
 7 tion, for any grading period, the student may, sub-
 8 ject to this subsection, again be eligible under sub-
 9 section ~~(a)(3)~~ for a grant under this subpart.

10 ~~“(3) WAIVER.—~~Any institution of higher edu-
 11 cation at which the student is in attendance may
 12 waive paragraph ~~(1)~~ or ~~(2)~~ for undue hardship based
 13 on—

14 ~~“(A) the death of a relative of the student;~~

15 ~~“(B) the personal injury or illness of the~~
 16 student; or

17 ~~“(C) special circumstances as determined~~
 18 by the institution.

19 ~~“(d) STUDENTS WHO ARE NOT SECONDARY SCHOOL~~
 20 GRADUATES.—In order for a student who does not have
 21 a certificate of graduation from a school providing second-
 22 ary education, or the recognized equivalent of such certifi-
 23 cate, to be eligible for any assistance under this subpart,
 24 the student shall meet either 1 of the following standards:

1 “(1) EXAMINATION.—The student shall take an
2 independently administered examination and shall
3 achieve a score, specified by the Secretary, dem-
4 onstrating that such student can benefit from the
5 education or training being offered. Such examina-
6 tion shall be approved by the Secretary on the basis
7 of compliance with such standards for development,
8 administration, and scoring as the Secretary may
9 prescribe in regulations.

10 “(2) DETERMINATION.—The student shall be
11 determined as having the ability to benefit from the
12 education or training in accordance with such pro-
13 cess as the State shall prescribe. Any such process
14 described or approved by a State for the purposes of
15 this section shall be effective 6 months after the date
16 of submission to the Secretary unless the Secretary
17 disapproves such process. In determining whether to
18 approve or disapprove such process, the Secretary
19 shall take into account the effectiveness of such
20 process in enabling students without secondary
21 school diplomas or the recognized equivalent to bene-
22 fit from the instruction offered by institutions utiliz-
23 ing such process, and shall also take into account
24 the cultural diversity, economic circumstances, and

1 educational preparation of the populations served by
2 the institutions.

3 ~~“(e) SPECIAL RULE FOR CORRESPONDENCE~~
4 ~~COURSES.—A student shall not be eligible to receive a~~
5 ~~grant under this subpart for a correspondence course un-~~
6 ~~less such course is part of a program leading to an associ-~~
7 ~~ate, bachelor, or graduate degree.~~

8 ~~“(f) COURSES OFFERED THROUGH TELECOMMUNI-~~
9 ~~CATIONS.—~~

10 ~~“(1) RELATION TO CORRESPONDENCE~~
11 ~~COURSES.—A student enrolled in a course of in-~~
12 ~~struction at an eligible institution of higher edu-~~
13 ~~cation (other than an institute or school that meets~~
14 ~~the definition in section 521(4)(C) of the Carl D.~~
15 ~~Perkins Vocational and Applied Technology Edu-~~
16 ~~cation Act (20 U.S.C. 2471(4)(C))) that is offered~~
17 ~~in whole or in part through telecommunications and~~
18 ~~leads to a recognized associate, bachelor, or graduate~~
19 ~~degree conferred by such institution shall not be~~
20 ~~considered to be enrolled in correspondence courses~~
21 ~~unless the total amount of telecommunications and~~
22 ~~correspondence courses at such institution equals or~~
23 ~~exceeds 50 percent of such courses.~~

24 ~~“(2) RESTRICTION OR REDUCTIONS OF FINAN-~~
25 ~~CIAL AID.—A student’s eligibility to receive a grant~~

1 under this subpart may be reduced if a financial aid
2 officer determines under the discretionary authority
3 provided in section 479A that telecommunications
4 instruction results in a substantially reduced cost of
5 attendance to such student.

6 “(3) DEFINITION.—For the purposes of this
7 subsection, the term ‘telecommunications’ means the
8 use of television, audio, or computer transmission,
9 including open broadcast, closed circuit, cable,
10 microwave, or satellite, audio conferencing, computer
11 conferencing, or video cassettes or discs, except that
12 such term does not include a course that is delivered
13 using video cassette or disc recordings at such insti-
14 tution and that is not delivered in person to other
15 students of that institution.

16 “(g) STUDY ABROAD.—Nothing in this subpart shall
17 be construed to limit or otherwise prohibit access to study
18 abroad programs approved by the home institution at
19 which a student is enrolled. An otherwise eligible student
20 who is engaged in a program of study abroad approved
21 for academic credit by the home institution at which the
22 student is enrolled shall be eligible to receive a grant under
23 this subpart, without regard to whether such study abroad
24 program is required as part of the student’s degree
25 program.

1 “(h) VERIFICATION OF SOCIAL SECURITY NUM-
 2 BER.—The Secretary, in cooperation with the Commis-
 3 sioner of Social Security, shall verify any social security
 4 number provided by a student to an eligible institution
 5 under subsection (a)(5)(B) and shall enforce the following
 6 conditions:

7 “(1) PENDING VERIFICATION.—Except as pro-
 8 vided in paragraphs (2) and (3), an institution shall
 9 not deny, reduce, delay, or terminate a student’s eli-
 10 gibility for assistance under this subpart because so-
 11 cial security number verification is pending.

12 “(2) DENIAL OR TERMINATION.—If there is a
 13 determination by the Secretary that the social secu-
 14 rity number provided to an eligible institution by a
 15 student is incorrect, the institution shall deny or ter-
 16 minate the student’s eligibility for any grant under
 17 this subpart until such time as the student provides
 18 documented evidence of a social security number
 19 that is determined by the institution to be correct.

20 “(3) CONSTRUCTION.—Nothing in this sub-
 21 section shall be construed to permit the Secretary to
 22 take any compliance, disallowance, penalty, or other
 23 regulatory action against—

24 “(A) any institution of higher education
 25 with respect to any error in a social security

number, unless such error was a result of fraud
on the part of the institution; or

“(B) any student with respect to any error
in a social security number, unless such error
was a result of fraud on the part of the
student.”.

SUBTITLE D—IMMUNITY

SEC. 941. GENERAL IMMUNITY FOR TOBACCO PRODUCERS AND WAREHOUSERS.

Notwithstanding any other provision of this title, an
active tobacco producer, tobacco-related growers associa-
tion, or tobacco warehouse owner or employee may not be
subject to liability in any Federal or State court for any
cause of action resulting from the failure of any tobacco
product manufacturer, distributor, or retailer to comply
with national tobacco settlement legislation.

TITLE X—EFFECTIVE DATES AND OTHER PROVISIONS

SEC. 1001. EFFECTIVE DATES.

(a) IN GENERAL.—Except as provided in subsection
(b), and as otherwise provided in this Act, the provisions
of this Act shall take effect on the date of enactment of
this Act.

(b) EXCEPTIONS.—The following provisions shall be-
come effective as follows:

1 (1) The retail tobacco product display provi-
2 sions under subtitle A of title I shall be applicable
3 to retailers on the date that is 9 months after the
4 date of enactment of this Act.

5 (2) The provisions relating to the display of to-
6 bacco product signs and displays by retailers under
7 subtitle A of title I shall be applicable to retailers on
8 the date that is 5 months after the date of enact-
9 ment of this Act.

10 (3) The provisions of subtitle A of title I relat-
11 ing to advertising shall be applicable on the date
12 that is 9 months after the date of enactment of this
13 Act.

14 (4) The labeling requirements of subtitle A of
15 title I and of chapter 9 of the Federal Food, Drug
16 and Cosmetic Act (as added by section 143(3) of
17 this Act) shall be applicable (as determined under
18 regulations promulgated by the Secretary) with re-
19 spect to—

20 (A) $\frac{1}{3}$ of all tobacco product packages, on
21 the date that is 90 days after the date of enact-
22 ment of this Act;

23 (B) $\frac{1}{3}$ of all tobacco product packages, on
24 the date that is 120 days after the date of en-
25 actment of this Act; and

1 (C) ~~1/3~~ of all tobacco product packages, on
2 the date that is 180 days after the date of en-
3 actment of this Act.

4 (5) The provisions of section 105 relating to the
5 sponsorship of events shall be applicable on Decem-
6 ber 31, 1998.

7 (6) The provisions of section 121 shall be appli-
8 cable on the date that is 3 months after the date of
9 enactment of this Act.

10 (7) The provisions of section 122 relating to
11 vending machines shall be applicable on the date
12 that is 12 months after the date of enactment of
13 this Act.

14 (8) The provisions of section 122 relating to
15 minimum package size shall be applicable on the
16 date that is 3 months after the date of enactment
17 of this Act.

18 (9) The provisions of section 122 relating to
19 vending machines shall be applicable on the date
20 that is 12 months after the date of enactment of
21 this Act.

22 (10) The provisions of section 122 relating to
23 sampling shall be applicable on the date that is 3
24 months after the date of enactment of this Act.

1 (11) The provisions of section 909 of the Fed-
 2 eral Food, Drug and Cosmetic Act (as added by sec-
 3 tion 143(3) of this Act) relating to good manufac-
 4 turing practices shall be applicable on the date that
 5 is 24 months after the date of enactment of this Act
 6 or on a date determined appropriate by the Sec-
 7 retary.

8 (12) The provisions of subtitle F of title I relat-
 9 ing to corporate compliance shall be applicable on
 10 the date that is 12 months after the date of enact-
 11 ment of this Act.

12 **SEC. 1002. NATIVE AMERICANS.**

13 (a) INDIAN COUNTRY.—The provisions of this Act (or
 14 an amendment made by this Act) shall apply to the manu-
 15 facture, distribution, and sale of tobacco products within
 16 Indian country.

17 (b) INDIAN TRIBES.—To the extent that an Indian
 18 tribe or tribal organization engages in the manufacture,
 19 distribution, or sale of tobacco products, the provisions of
 20 this Act (or an amendment made by this Act) shall apply
 21 to such tribe or organization.

22 (c) PAYMENTS TO TRUST FUND.—Any Indian tribe
 23 or tribal organization that engages in the manufacturer
 24 of tobacco products shall be subject to liability under sec-
 25 tion 402, or shall be considered a non-participating manu-

1 facturer for purposes of section 613, and shall be subject
 2 to surcharges under section 205.

3 ~~(d) APPLICATION OF FDA REQUIREMENTS.—~~

4 ~~(1) IN GENERAL.—~~The Secretary shall promul-
 5 gate regulations to provide for the application of the
 6 requirements of the Food, Drug and Cosmetic Act
 7 to tobacco products manufactured, distributed, or
 8 sold within Indian country.

9 ~~(2) ELIGIBILITY FOR ASSISTANCE.—~~Under the
 10 regulations promulgated under paragraph ~~(1)~~, the
 11 Secretary may provide assistance to an Indian tribe
 12 or tribal organization in meeting and enforcing the
 13 requirements under such regulations if—

14 ~~(A)~~ the tribe or organization has a govern-
 15 ing body that has powers and carries out duties
 16 that are similar to the powers and duties of
 17 State or local governments;

18 ~~(B)~~ the functions to be exercised through
 19 the use of such assistance relate to activities on
 20 lands within the jurisdiction of the tribe or or-
 21 ganization; and

22 ~~(C)~~ the tribe or organization is reasonably
 23 expected to be capable of carrying out the func-
 24 tions required by the Secretary.

25 ~~(e) RETAIL LICENSING REQUIREMENTS.—~~

1 (1) IN GENERAL.—The requirements of subtitle
2 D of title I shall apply to retailers that sell tobacco
3 products within Indian country.

4 (2) SELF-REGULATION.—The Secretary shall
5 promulgate regulations to permit the Indian tribe or
6 tribal organization with jurisdiction over the lands
7 involved to implement a tribal licensing program
8 that is at least as strict as the program in operation
9 in the State in which the land involved is located.

10 (3) IMPLEMENTATION BY SECRETARY.—If the
11 Secretary determines that the Indian tribe or tribal
12 organization is not qualified to administer the re-
13 quirements of subtitle D of title I, the Secretary
14 shall implement such requirements on behalf of the
15 tribe or organization or delegate such authority to
16 the State involved.

17 (f) ELIGIBILITY FOR PUBLIC HEALTH PAYMENTS.—

18 (1) IN GENERAL.—Except as provided in para-
19 graph (2), an Indian tribe or tribal organization
20 shall be considered a State for purposes of eligibility
21 under title V.

22 (2) PUBLIC HEALTH PROGRAM.—

23 (A) IN GENERAL.—Each State that re-
24 ceives a payment under section 502 shall set-
25 aside an appropriate portion, as determined

1 under regulations prescribed by the Secretary,
2 of such payment for use by Indian tribes or
3 tribal organizations within the State.

4 (B) AMOUNT.—The amount of any funds
5 under subparagraph for which an Indian tribe
6 or tribal organization is eligible shall be deter-
7 mined by the State based on the proportion of
8 the registered members of the tribe involved as
9 compared to the total population of all such
10 registered members in the State.

11 (C) USE.—Amounts provided to a tribe or
12 organization under this paragraph shall be used
13 as provided for in section 504 and in accord-
14 ance with a plan submitted by the tribe or orga-
15 nization and approved by the Secretary as being
16 in compliance with this Act.

17 (D) REALLOTMENT.—Any amounts set-
18 aside and not expended under this paragraph
19 shall be reallocated among other eligible tribes
20 and organizations.

21 (g) OBLIGATION OF MANUFACTURERS.—

22 (1) PROHIBITION.—A manufacturer shall not
23 engage in any activity within Indian country that is
24 otherwise prohibited under this Act (or an amend-
25 ment made by this Act).

1 (2) **LIMITATION ON SALE.**—A manufacturer
 2 shall not sell or otherwise distribute a tobacco prod-
 3 uct for subsequent manufacture, distribution, or sale
 4 to an Indian tribe or tribal organization, or provide
 5 such products to a manufacturer, distributor, or re-
 6 tailer that is subject to the jurisdiction of a tribe or
 7 organization, except under the same terms and con-
 8 ditions as the manufacturer imposes on other manu-
 9 facturers, distributors, or retailers.

10 (h) **DEFINITIONS.**—In this section:

11 (1) **INDIAN COUNTRY.**—The term “Indian coun-
 12 try” has the meaning given such term by section
 13 1151 of title 18, United States Code.

14 (2) **INDIAN TRIBE.**—The term “Indian tribe”
 15 has the meaning given to such term by section 4(e)
 16 of the Indian Self-Determination and Education As-
 17 sistance Act (25 U.S.C. 450b(e)).

18 (3) **TRIBAL ORGANIZATION.**—The term “tribal
 19 organization” has the meaning given such term in
 20 section 4 of the Indian Self Determination and Edu-
 21 cation Assistance Act (25 U.S.C. 450b).

22 **SEC. 1003. PREEMPTION.**

23 (a) **GENERAL PREEMPTION.**—Except as otherwise
 24 provided for in this section, nothing in this Act shall be
 25 construed as prohibiting a State from imposing require-

1 ments, prohibitions, penalties or other measures to further
2 the purposes of this Act that are in addition to the re-
3 quirements, prohibitions, or penalties required under this
4 Act. To the extent not inconsistent with the purposes of
5 this Act, State and local governments may impose addi-
6 tional tobacco product control measures to further restrict
7 or limit the use of such products by minors.

8 (b) ENFORCEMENT.—A State may not impose obliga-
9 tions or requirements relating to the enforcement of this
10 Act in a manner that conflicts with the provisions of title
11 VI.

12 (c) PUBLIC EXPOSURE TO SMOKE.—Nothing in title
13 III shall be construed to preempt or otherwise affect any
14 other Federal, State or local law which provides greater
15 protection from the health hazards of environmental to-
16 bacco smoke.

17 (d) TAXES.—Nothing in this Act shall be construed
18 to prohibit a State from imposing taxes on tobacco prod-
19 ucts or tobacco product manufacturers, distributors, or re-
20 tailers.

21 (e) NATIVE AMERICANS.—Except as provided in sec-
22 tion 902, a State may not impose obligations or require-
23 ments relating to the application of this Act to Indian
24 tribes and tribal organizations.

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) *SHORT TITLE.*—*This Act may be cited as the “Na-*
 3 *tional Tobacco Policy and Youth Smoking Reduction Act”.*

4 (b) *TABLE OF CONTENTS.*—*The table of contents for*
 5 *this Act is as follows:*

Sec. 1. Short title; table of contents.

Sec. 2. Findings.

Sec. 3. Purpose.

Sec. 4. Scope and effect.

Sec. 5. Non-preemption of more restrictive laws.

Sec. 6. Definitions.

Sec. 7. Notification if youthful cigarette smoking restrictions increase youthful
pipe and cigar smoking.

Sec. 8. Liability limitations disappear if manufacturers challenge advertising lim-
its.

Sec. 9. FTC jurisdiction not affected.

Sec. 10. Congressional review provisions.

TITLE I—REGULATION OF THE TOBACCO INDUSTRY

Subtitle A—Jurisdiction, Etc., of Food and Drug Administration

Sec. 101. Amendment of Federal Food, Drug, and Cosmetic Act of 1938.

“CHAPTER IX—TOBACCO PRODUCTS

“Sec. 901. FDA authority over tobacco products

“Sec. 902. Adulterated tobacco products.

“Sec. 903. Misbranded tobacco products.

“Sec. 904. Submission of health information to the Secretary.

“Sec. 905. Registration.

“Sec. 906. General provisions respecting control of tobacco products.

“Sec. 907. Performance standards.

“Sec. 908. Notification and other remedies

“Sec. 909. Records and reports on tobacco products.

“Sec. 910. Premarket review of certain tobacco products.

“Sec. 911. Judicial review.

“Sec. 912. Postmarket surveillance

“Sec. 913. Reduced risk tobacco products.

“Sec. 914. Preservation of State and local authority.

“Sec. 915. Tobacco Products Scientific Advisory Committee.

“Sec. 916. Equal treatment of retail outlets.

Sec. 102. Conforming and other amendments to general provisions.

Subtitle B—Advertising

Sec. 121. Advertising provisions in protocol.

Sec. 122. Tobacco product labeling and advertising .

Sec. 123. Point-of-sale restrictions.

TITLE II—REDUCTIONS IN UNDERAGE TOBACCO USE

Subtitle A—Underage Use

Sec. 201. Goals for reducing underage tobacco use.

【Sec. 202. Look-back assessment.】

Sec. 203. Substantial non-attainment of required reductions.

Sec. 204. Definitions.

Subtitle B—State Enforcement Incentives

【Sec. 211. Compliance bonus fund.】

Sec. 212. Block grants.

Sec. 213. State enforcement incentives.

Sec. 214. Conforming change.

Subtitle C—Other Programs

Sec. 221. National smoking cessation program.

Sec. 222. National tobacco-free public education program.

Sec. 223. National community action program.

Sec. 224. State retail licensing program.

*TITLE III—TOBACCO PRODUCT WARNINGS AND SMOKE
CONSTITUENT DISCLOSURE*

Subtitle A—Product Warnings, Labeling and Packaging

Sec. 301. Cigarette label and advertising warnings.

“Sec. 4. Labeling.

Sec. 302. Authority to revise cigarette warning label statements.

Sec. 303. Smokeless tobacco labels and advertising warnings.

“Sec. 3. Smokeless tobacco warning.

Sec. 304. Authority to revise smokeless tobacco product warning label statements.

Sec. 305. Tar, nicotine, and other smoke constituent disclosure to the public.

Subtitle B—Testing and Reporting of Tobacco Product Smoke Constituents

Sec. 311. Regulation requirement.

TITLE IV—NATIONAL TOBACCO SETTLEMENT TRUST FUND

【Subtitle A—General Payment Provisions

【Sec. 401. Establishment of trust fund.

【Sec. 402. State litigation settlement account.

【Sec. 403. Payments by industry

【Sec. 404. Adjustments.

【Sec. 405. Tax treatment of payments.

【Sec. 406. Enforcement for nonpayment.

【Sec. 407. Administrative provisions.】

Subtitle B—General Spending Provisions

Sec. 411. Implementing and enforcement funds.

【Sec. 412. Improving child care and early childhood development.】

*TITLE V—STANDARDS TO REDUCE INVOLUNTARY EXPOSURE TO
TOBACCO SMOKE*

- Sec. 501. Definitions.*
- Sec. 502. Smoke-free environment policy.*
- Sec. 503. Citizen actions.*
- Sec. 504. Preemption.*
- Sec. 505. Regulations.*
- Sec. 506. Effective date.*
- Sec. 507. State choice.*

TITLE VI—APPLICATION TO INDIAN TRIBES

- Sec. 601. Short title.*
- Sec. 602. Findings and purposes.*
- Sec. 603. Application of tobacco-related provisions to native Americans.*
- Sec. 604. State tobacco excise tax compliance.*

*TITLE VII—CIVIL LIABILITY OF MANUFACTURERS OF TOBACCO
PRODUCTS*

- Sec. 701. Definitions.*
- Sec. 702. Application.*
- Sec. 703. Preemption and relationship to other law.*
- Sec. 704. Governmental claims and Castano civil actions.*
- Sec. 705. Concurrent jurisdiction; Federal cause of action; actions; damages; liability.*
- Sec. 706. Payment of tobacco claim settlements and judgments.*
- Sec. 707. Attorney's fees and expenses.*
- Sec. 708. Non-participating manufacturers.*
- Sec. 709. Conforming amendments.*

*TITLE VIII—TOBACCO INDUSTRY COMPLIANCE AND EMPLOYEE
PROTECTION FROM REPRISALS*

- Sec. 801. Tobacco industry compliance accountability requirements.*
- Sec. 802. Tobacco product manufacturer employee protection.*

*TITLE IX—PUBLIC DISCLOSURE OF TOBACCO INDUSTRY
DOCUMENTS*

- Sec. 901. Findings.*
- Sec. 902. Applicability.*
- Sec. 903. National Tobacco Document Depository.*
- Sec. 904. Privilege and trade secret claims.*
- Sec. 905. Disclosure by the depository.*
- Sec. 906. National Tobacco Documents Review Board.*
- Sec. 907. Resolution of disputed privilege and trade secret claims.*
- Sec. 908. Appeal of board decision.*
- Sec. 909. Miscellaneous.*
- Sec. 910. Penalties.*
- Sec. 911. Definitions.*

TITLE X—LONG-TERM ECONOMIC ASSISTANCE FOR FARMERS

- Sec. 1001. Short title.*
- Sec. 1002. Definitions.*

Subtitle A—Tobacco Community Revitalization Trust Fund

[*Sec. 1011. Establishment of trust fund.*

]*Sec. 1012. Contributions by tobacco product manufacturers and importers.***]**

Subtitle B—Tobacco Market Transition Assistance

Sec. 1021. Payments for lost tobacco quota.

Sec. 1022. Industry payments for all department costs associated with tobacco production.

Sec. 1023. Tobacco community economic development grants.

Sec. 1024. Flue-cured tobacco production permits.

“Sec. 317a. Flue-cured tobacco production permits.

Sec. 1025. Modifications in federal tobacco programs.

Subtitle C—Farmer and Worker Transition Assistance

Sec. 1031. Tobacco worker transition program.

Sec. 1032. Farmer opportunity grants.

“Subpart 9—Farmer Opportunity Grants

“Sec. 420d. Statement of purpose.

“Sec. 420e. Program authority; amount and determinations; applications.

“Sec. 420f. Student eligibility.

Subtitle D—Immunity

Sec. 1041. General immunity for tobacco producers and tobacco warehouse owners.

TITLE XI—MISCELLANEOUS

Subtitle A—Prohibitions Relating to Tobacco Products and Children

Sec. 1101. Short title.

Sec. 1102. Prohibitions relating to tobacco products and children.

“Sec. 804. Prohibition on sale or distribution of tobacco products to children.

“Sec. 805. Labeling.

Sec. 1103. Enforcement.

Sec. 1104. Reward.

Sec. 1105. Definitions.

Sec. 1106. Amendments to Public Health Service Act.

“TITLE XXVIII—NATIONAL EFFORTS TO REDUCE YOUTH SMOKING

“Subtitle E—Reducing Youth Smoking and Tobacco-Related Diseases Through Research

“Sec. 2801. Study by the Institute of Medicine.

“Sec. 2802. National tobacco task force.

“Sec. 2803. Research activities of the Centers for Disease Control and Prevention.

“Sec. 2804. Research activities of the National Institutes of Health.

Sec. 1107. Ban on distribution of tobacco products produced by child labor.

Subtitle B—Federal Licensing of Tobacco Product Distribution

Sec. 1121. Licensing of Tobacco Product Distribution.

*Subtitle C—International Provisions***【Sec. 1131. International tobacco control trust fund.】****Sec. 1131. International enforcement.**

Sec. 1132. American center on global health and tobacco.

Sec. 1133. Prohibition on use of funds to facilitate the exportation or promotion of tobacco.

【Sec. 1134. Harmonization with United States international commitments and obligations.】

Subtitle D—Prevention of Tobacco Smuggling

Sec. 1141. Definitions.

Sec. 1142. Tobacco product labeling requirements.

Sec. 1143. Requirements for the tracking of tobacco products.

Sec. 1144. Tobacco product permits.

Sec. 1145. Prohibitions.

Sec. 1146. Pricing and labeling of products sold on military installations or by native Americans.

Sec. 1147. Prohibition against sale of tobacco products in or to duty-free shops or forwarding through or manufacture in trade zones.

Sec. 1148. Jurisdiction; penalties; compromise of liability.

Sec. 1149. Amendments to the Contraband Cigarette Trafficking Act.

Sec. 1150. Authorization of appropriations.

Subtitle E—Antitrust Exemption

Sec. 1161. Limited Antitrust Exemption.

Subtitle F—Special Provisions Concerning Programs for Women, Minorities, and Others

Sec. 1171. Research related to patterns of smoking by women and minorities.

Sec. 1172. Counter-advertising programs.

Sec. 1173. Prevention activities of community and migrant health centers.

Subtitle G—Sense of the Senate

Sec. 1181. Sense of the Senate.

Subtitle H—Ban On Sale Of Tobacco Products Through The Use Of Vending Machines

Sec. 1191. Ban of sale of tobacco products through the use of vending machines.

【TITLE XII—TOBACCO ASBESTOS TRUST FUND**【Sec. 1201. Definitions.****【Sec. 1202. Tobacco Asbestos Trust Fund.****【Sec. 1203. Payments from fund I.****【Sec. 1204. Payments from fund II.****【Sec. 1205. Transfers from National Tobacco Settlement Trust Fund.****【Sec. 1206. Rules for claims against asbestos trusts, asbestos defendants, and tobacco companies.】**

TITLE XIII—VETERANS' BENEFITS

Sec. 1301. Recovery by secretary of veterans affairs.

“PART VII—RECOVERY OF COMPENSATION COSTS FOR TOBACCO-RELATED
DISABILITY OR DEATH

“CHAPTER 91—TORT LIABILITY FOR DISABILITY OR DEATH DUE
TO TOBACCO USE

“§ 9101. *Recovery by Secretary of Veterans Affairs*

“§ 9102. *Regulations*

“§ 9103. *Limitation or repeal of other provisions for recovery of compensation*

“§ 9104. *Exemption from annual limitation on damages*

TITLE XIV—REVENUE AND OTHER PROVISIONS

Subtitle A—Taxes on Tobacco Products

Sec. 1400. Amendment of 1986 Code.

Sec. 1401. Taxes on tobacco products.

Sec. 1402. Excise tax on failure to meet underage smoking reduction goals.

Sec. 1403. Establishment of Trust Fund.

Subtitle B—Women’s Health and Cancer Rights

Sec. 1411. Short title.

Sec. 1412. Findings.

Sec. 1413. Amendments to the Employee Retirement Income Security Act of 1974.

Sec. 1414. Amendments to the Public Health Service Act relating to the group market.

Sec. 1415. Amendment to the Public Health Service Act relating to the individual market.

Sec. 1416. Amendments to the Internal Revenue Code of 1986.

Sec. 1417. Research study on the management of breast cancer.

Subtitle C—Limitations Applicable to Other Provisions

Sec. 1421. Limitations on expenditures and obligations.

Sec. 1422. Limitation on user fees.

1 **SEC. 2. FINDINGS.**

2 *The Congress finds the following:*

3 (1) *The use of tobacco products by the Nation’s*
4 *children is a pediatric disease of epic and worsening*
5 *proportions that results in new generations of to-*
6 *bacco-dependent children and adults.*

7 (2) *A consensus exists within the scientific and*
8 *medical communities that tobacco products are inher-*

1 *ently dangerous and cause cancer, heart disease, and*
2 *other serious adverse health effects.*

3 (3) *Nicotine is an addictive drug.*

4 (4) *Virtually all new users of tobacco products*
5 *are under the minimum legal age to purchase such*
6 *products.*

7 (5) *Tobacco advertising and marketing contrib-*
8 *ute significantly to the use of nicotine-containing to-*
9 *bacco products by adolescents.*

10 (6) *Because past efforts to restrict advertising*
11 *and marketing of tobacco products have failed ade-*
12 *quately to curb tobacco use by adolescents, comprehen-*
13 *sive restrictions on the sale, promotion, and distribu-*
14 *tion of such products are needed.*

15 (7) *Federal and State governments have lacked*
16 *the legal and regulatory authority and resources they*
17 *need to address comprehensively the public health and*
18 *societal problems caused by the use of tobacco prod-*
19 *ucts.*

20 (8) *Federal and State public health officials, the*
21 *public health community, and the public at large rec-*
22 *ognize that the tobacco industry should be subject to*
23 *ongoing oversight.*

24 (9) *Under Article I, Section 8 of the Constitu-*
25 *tion, the Congress is vested with the responsibility for*

1 *regulating interstate commerce and commerce with*
2 *Indian tribes.*

3 (10) *The sale, distribution, marketing, advertis-*
4 *ing, and use of tobacco products are activities in and*
5 *substantially affecting interstate commerce. Such*
6 *products are sold, marketed, advertised, and distrib-*
7 *uted in interstate commerce on a nationwide basis,*
8 *and have a substantial effect on the Nation's economy.*

9 (11) *The sale, distribution, marketing, advertis-*
10 *ing, and use of such products substantially affect*
11 *interstate commerce through the health care and other*
12 *costs attributable to the use of tobacco products.*

13 (12) *Civil actions against tobacco product manu-*
14 *facturers and others are pending in Federal and State*
15 *courts arising from the use, marketing, and sale of to-*
16 *bacco products. Among these actions are cases brought*
17 *by the attorneys general of more than 40 States, cer-*
18 *tain cities and counties, and the Commonwealth of*
19 *Puerto Rico, and other parties, including Indian*
20 *tribes, and class actions brought by private claimants*
21 *(such as in the Castano Civil Actions), seeking to re-*
22 *cover monies expended to treat tobacco-related dis-*
23 *eases and for the protection of minors and consumers,*
24 *as well as penalties and other relief for violations of*

1 *antitrust, health, consumer protection, and other*
2 *laws.*

3 *(13) Civil actions have been filed throughout the*
4 *United States against tobacco product manufacturers*
5 *and their distributors, trade associations, law firms,*
6 *and consultants on behalf of individuals or classes of*
7 *individuals claiming to be dependent upon and in-*
8 *jured by tobacco products.*

9 *(14) These civil actions are complex, time-con-*
10 *suming, expensive, and burdensome for both the liti-*
11 *gants and Federal and State courts. To date, these*
12 *civil actions have not resulted in sufficient redress for*
13 *smokers or non-governmental third-party payers. To*
14 *the extent that governmental entities have been or*
15 *may in the future be compensated for tobacco-related*
16 *claims they have brought, it is not now possible to*
17 *identify what portions of such past or future recover-*
18 *ies can be attributed to their various antitrust, health,*
19 *consumer protection, or other causes of action.*

20 *(15) It is in the public interest for Congress to*
21 *adopt comprehensive public health legislation because*
22 *of tobacco's unique position in the Nation's history*
23 *and economy; the need to prevent the sale, distribu-*
24 *tion, marketing and advertising of tobacco products to*
25 *persons under the minimum legal age to purchase*

1 *such products; and the need to educate the public, es-*
2 *pecially young people, regarding the health effects of*
3 *using tobacco products.*

4 *(16) The public interest requires a timely, fair,*
5 *equitable, and consistent result that will serve the*
6 *public interest by (A) providing that a portion of the*
7 *costs of treatment for diseases and adverse health ef-*
8 *fects associated with the use of tobacco products is*
9 *borne by the manufacturers of these products, and (B)*
10 *restricting throughout the Nation the sale, distribu-*
11 *tion, marketing, and advertising of tobacco products*
12 *only to persons of legal age to purchase such products.*

13 *(17) Public health authorities estimate that the*
14 *benefits to the Nation of enacting Federal legislation*
15 *to accomplish these goals would be significant in*
16 *human and economic terms.*

17 *(18) Reducing the use of tobacco by minors by*
18 *50 percent would prevent well over 60,000 early*
19 *deaths each year and save up to \$43 billion each year*
20 *in reduced medical costs, improved productivity, and*
21 *the avoidance of premature deaths.*

22 *(19) Advertising, marketing, and promotion of*
23 *tobacco products have been especially directed to at-*
24 *tract young persons to use tobacco products and these*
25 *efforts have resulted in increased use of such products*

1 *by youth. Past efforts to oversee these activities have*
2 *not been successful in adequately preventing such in-*
3 *creased use.*

4 (20) *In 1995, the tobacco industry spent close to*
5 *\$4,900,000,000 to attract new users, retain current*
6 *users, increase current consumption, and generate fa-*
7 *vorable long-term attitudes toward smoking and to-*
8 *bacco use.*

9 (21) *Tobacco product advertising often*
10 *misleadingly portrays the use of tobacco as socially*
11 *acceptable and healthful to minors.*

12 (22) *Tobacco product advertising is regularly*
13 *seen by persons under the age of 18, and persons*
14 *under the age of 18 are regularly exposed to tobacco*
15 *product promotional efforts.*

16 (23) *Through advertisements during and spon-*
17 *sorship of sporting events, tobacco has become strongly*
18 *associated with sports and has become portrayed as*
19 *an integral part of sports and the healthy lifestyle as-*
20 *sociated with rigorous sporting activity.*

21 (24) *Children are exposed to substantial and un-*
22 *avoidable tobacco advertising that leads to favorable*
23 *beliefs about tobacco use, plays a role in leading*
24 *young people to overestimate the prevalence of tobacco*

1 *use, and increases the number of young people who*
2 *begin to use tobacco.*

3 *(25) Tobacco advertising increases the size of the*
4 *tobacco market by increasing consumption of tobacco*
5 *products including increasing tobacco use by young*
6 *people.*

7 *(26) Children are more influenced by tobacco ad-*
8 *vertising than adults, they smoke the most advertised*
9 *brands, and children as young as 3 to 6 years old can*
10 *recognize a character associated with smoking at the*
11 *same rate as they recognize cartoons and fast food*
12 *characters.*

13 *(27) Tobacco company documents indicate that*
14 *young people are an important and often crucial seg-*
15 *ment of the tobacco market.*

16 *(28) Comprehensive advertising restrictions will*
17 *have a positive effect on the smoking rates of young*
18 *people.*

19 *(29) Restrictions on advertising are necessary to*
20 *prevent unrestricted tobacco advertising from under-*
21 *mining legislation prohibiting access to young people*
22 *and providing for education about tobacco use.*

23 *(30) International experience shows that adver-*
24 *tising regulations that are stringent and comprehen-*
25 *sive have a greater impact on overall tobacco use and*

1 *young people's use than weaker or less comprehensive*
2 *ones. Text-only requirements, while not as stringent*
3 *as a ban, will help reduce underage use of tobacco*
4 *products while preserving the informational function*
5 *of advertising.*

6 *(31) It is in the public interest for Congress to*
7 *adopt legislation to address the public health crisis*
8 *created by actions of the tobacco industry.*

9 *(32) If, as a direct or indirect result of this Act,*
10 *the consumption of tobacco products in the United*
11 *States is reduced significantly, then tobacco farmers,*
12 *their families, and their communities may suffer eco-*
13 *nomical hardship and displacement, notwithstanding*
14 *their lack of involvement in the manufacturing and*
15 *marketing of tobacco products.*

16 **SEC. 3. PURPOSE.**

17 *The purposes of this Act are—*

18 *(1) to confirm the authority of the Food and*
19 *Drug Administration to regulate tobacco products*
20 *under the Federal Food, Drug, and Cosmetic Act (21*
21 *U.S.C. 301 et seq.), by recognizing it as the primary*
22 *Federal regulatory authority with respect to the man-*
23 *ufacture, marketing, and distribution of tobacco prod-*
24 *ucts;*

1 (2) *to require the tobacco industry to fund both*
2 *Federal and State oversight of the tobacco industry*
3 *from on-going payments by tobacco product manufac-*
4 *turers;*

5 (3) *to require tobacco product manufacturers to*
6 *provide ongoing funding to be used for an aggressive*
7 *Federal, State, and local enforcement program and*
8 *for a nationwide retail licensing system to prevent*
9 *minors from obtaining tobacco products, while ex-*
10 *pressly permitting the States to adopt additional*
11 *measures that further restrict or eliminate the prod-*
12 *ucts' use;*

13 (4) *to ensure that the Food and Drug Adminis-*
14 *tration and the States may continue to address issues*
15 *of particular concern to public health officials, espe-*
16 *cially the use of tobacco by young people and depend-*
17 *ence on tobacco;*

18 (5) *to impose severe financial surcharges on to-*
19 *bacco product manufacturers if they do not substan-*
20 *tially reduce tobacco use by young people during the*
21 *next decade;*

22 (6) *to authorize appropriate agencies of the Fed-*
23 *eral government to set national standards controlling*
24 *the manufacture of tobacco products and the identity,*

1 *public disclosure, and amount of ingredients used in*
2 *such products;*

3 *(7) to provide new and flexible enforcement au-*
4 *thority to ensure that the tobacco industry makes ef-*
5 *forts to develop and introduce less harmful tobacco*
6 *products;*

7 *(8) to confirm the Food and Drug Administra-*
8 *tion's authority to regulate the levels of tar, nicotine,*
9 *and other harmful components of tobacco products;*

10 *(9) in order to ensure that adults are better in-*
11 *formed, to require tobacco product manufacturers to*
12 *disclose all research which has not previously been*
13 *made available, as well as research generated in the*
14 *future, relating to the health and dependency effects*
15 *or safety of tobacco products;*

16 *(10) to impose on tobacco product manufacturers*
17 *the obligation to provide funding for a variety of pub-*
18 *lic health initiatives;*

19 *(11) to establish a minimum Federal standard*
20 *for stringent restrictions on smoking in public places,*
21 *with funding to enforce such standard derived from*
22 *payments made by tobacco product manufacturers,*
23 *while also to permit State, Tribal, and local govern-*
24 *ments to enact additional and more stringent stand-*

1 *ards or elect not to be covered by the Federal stand-*
2 *ard;*

3 *(12) to authorize and fund from payments by to-*
4 *bacco product manufacturers a continuing national*
5 *counter-advertising and tobacco control campaign*
6 *which seeks to educate consumers and discourage chil-*
7 *dren and adolescents from beginning to use tobacco*
8 *products, and which encourages current users of to-*
9 *bacco products to discontinue using such products;*

10 *(13) to establish a mechanism to compensate the*
11 *States in settlement of their various claims against*
12 *tobacco product manufacturers;*

13 *(14) to authorize and to fund from payments by*
14 *tobacco product manufacturers a nationwide program*
15 *of smoking cessation administered through State and*
16 *Tribal governments and the private sector;*

17 *(15) to establish and fund from payments by to-*
18 *bacco product manufacturers a National Tobacco Set-*
19 *tlement Fund;*

20 *(16) to affirm the rights of individuals to access*
21 *to the courts, to civil trial by jury, and to damages*
22 *to compensate them for harm caused by tobacco prod-*
23 *ucts;*

24 *(17) to continue to permit the sale of tobacco*
25 *products to adults in conjunction with measures to*

1 *ensure that they are not sold or accessible to underage*
2 *purchasers;*

3 *(18) to impose appropriate regulatory controls*
4 *on the tobacco industry; and*

5 *(19) to protect tobacco farmers and their commu-*
6 *nities from the economic impact of this Act by pro-*
7 *viding full funding for and the continuation of the*
8 *Federal tobacco program and by providing funds for*
9 *farmers and communities to develop new opportuni-*
10 *ties in tobacco-dependent communities.*

11 **SEC. 4. SCOPE AND EFFECT.**

12 *(a) INTENDED EFFECT.—This Act is not intended to—*

13 *(1) establish a precedent with regard to any*
14 *other industry, situation, circumstance, or legal ac-*
15 *tion;*

16 *(2) express any position of the Congress with re-*
17 *gard to the imposition of punitive damages in general*
18 *or as applied to any specific industry, case, con-*
19 *troversy, or product other than as provided in this*
20 *Act;*

21 *(3) provide any authority regarding the imposi-*
22 *tion of, or the appropriateness of imposing, punitive*
23 *damages; or*

24 *(4) except as provided in this Act, affect any ac-*
25 *tion pending in State, Tribal, or Federal court, or*

1 *any agreement, consent decree, or contract of any*
2 *kind.*

3 (b) *TAXATION.*—*Notwithstanding any other provision*
4 *of law, this Act and the amendments made by this Act shall*
5 *not affect any authority of the Secretary of the Treasury*
6 *(including any authority assigned to the Bureau of Alcohol,*
7 *Tobacco and Firearms) or of State or local governments*
8 *with regard to taxation for tobacco or tobacco products.*

9 (c) *AGRICULTURAL ACTIVITIES.*—*The provisions of*
10 *this Act which authorize the Secretary to take certain ac-*
11 *tions with regard to tobacco and tobacco products shall not*
12 *be construed to affect any authority of the Secretary of Agri-*
13 *culture under existing law regarding the growing, cultiva-*
14 *tion, or curing of raw tobacco.*

15 **SEC. 5. NON-PREEMPTION OF MORE RESTRICTIVE LAWS.**

16 (a) *AGE RESTRICTIONS.*—*Nothing in this Act or the*
17 *Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et*
18 *seq.), as amended by this Act, shall prevent a Federal agen-*
19 *cy (including the Armed Forces), a State or its political*
20 *subdivisions, or the government of an Indian tribe from*
21 *adopting and enforcing additional measures that further re-*
22 *strict or prohibit tobacco product sale to, use by, and acces-*
23 *sibility to persons under the legal age of purchase estab-*
24 *lished by such agency, State, subdivision, or government of*
25 *an Indian tribe.*

1 (b) *ADDITIONAL MEASURES.—Except as otherwise ex-*
2 *pressly provided in this Act, nothing in this Act, the Fed-*
3 *eral Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.),*
4 *or rules promulgated under such Acts, shall limit the au-*
5 *thority of a Federal agency (including the Armed Forces),*
6 *a State or its political subdivisions, or the government of*
7 *an Indian tribe to enact, adopt, promulgate, and enforce*
8 *any law, rule, regulation, or other measure with respect to*
9 *tobacco products, including laws, rules, regulations, or other*
10 *measures relating to or prohibiting the sale, distribution,*
11 *possession, exposure to, or use of tobacco products by per-*
12 *sons of any age that are in addition to the provisions of*
13 *this Act and the amendments made by this Act. No provi-*
14 *sion of this Act or amendment made by this Act shall limit*
15 *or otherwise affect any State, Tribal, or local taxation of*
16 *tobacco products.*

17 (c) *STATE LAW NOT AFFECTED.—Except as otherwise*
18 *expressly provided in this Act, nothing in this Act, the Fed-*
19 *eral Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.),*
20 *or rules promulgated under such Acts, shall supersede the*
21 *authority of the States, pursuant to State law, to expend*
22 *funds provided by this Act.*

23 **SEC. 6. DEFINITIONS.**

24 *In this Act:*

1 (1) *BRAND*.—The term “brand” means a variety
2 of tobacco product distinguished by the tobacco used,
3 tar content, nicotine content, flavoring used, size, fil-
4 tration, or packaging, logo, registered trademark or
5 brand name, identifiable pattern of colors, or any
6 combination of such attributes.

7 (2) *CIGARETTE*.—The term “cigarette” has the
8 meaning given that term by section 3(1) of the Fed-
9 eral Cigarette Labeling and Advertising Act (15
10 U.S.C. 1332(1)), but also includes tobacco, in any
11 form, that is functional in the product, which, because
12 of its appearance, the type of tobacco used in the
13 filler, or its packaging and labeling, is likely to be of-
14 fered to, or purchased by, consumers as a cigarette or
15 as roll-your-own tobacco.

16 (3) *CIGARETTE TOBACCO*.—The term “cigarette
17 tobacco” means any product that consists of loose to-
18 bacco that is intended for use by consumers in a ciga-
19 rette. Unless otherwise stated, the requirements for
20 cigarettes shall also apply to cigarette tobacco.

21 (4) *COMMERCE*.—The term “commerce” has the
22 meaning given that term by section 3(2) of the Fed-
23 eral Cigarette Labeling and Advertising Act (15
24 U.S.C. 1332(2)).

1 (5) *CONSENT DECREE.*—The term “consent de-
2 cree” means a consent decree among participating to-
3 bacco product manufacturers whose substantive terms
4 are substantially equivalent to the form consent decree
5 published for purposes of this paragraph in the Con-
6 gressional Record.

7 (6) *DISTRIBUTOR.*—The term “distributor” as
8 regards a tobacco product means any person who fur-
9 thers the distribution of cigarette or smokeless tobacco,
10 whether domestic or imported, at any point from the
11 original place of manufacture to the person who sells
12 or distributes the product to individuals for personal
13 consumption. Common carriers are not considered
14 distributors for purposes of this Act.

15 (7) *INDIAN COUNTRY; INDIAN LANDS.*—The terms
16 “Indian country” and “Indian lands” have the mean-
17 ing given the term “Indian country” by section 1151
18 of title 18, United States Code, and includes lands
19 under the jurisdiction of an Indian tribe or tribal or-
20 ganization.

21 (8) *INDIAN TRIBE.*—The term “Indian tribe” has
22 the meaning given such term in section 4(e) of the In-
23 dian Self Determination and Education Assistance
24 Act (25 U.S.C. 450b(e)).

1 (9) *LITTLE CIGAR*.—The term “little cigar” has
 2 the meaning given that term by section 3(7) of the
 3 *Federal Cigarette Labeling and Advertising Act* (15
 4 U.S.C. 1332(7)).

5 (10) *TOBACCO PRODUCT MANUFACTURER*.—Ex-
 6 cept in title VII, the term “tobacco product manufac-
 7 turer” means any person, including any repacker or
 8 relabeler, who manufactures, fabricates, assembles,
 9 processes, or labels a finished cigarette or smokeless
 10 tobacco product.

11 (11) *NICOTINE*.—The term “nicotine” means the
 12 chemical substance named 3-(1-Methyl-2-pyrrolidinyl)
 13 pyridine or C[10]H[14]N[2], including any salt or
 14 complex of nicotine.

15 (12) *PACKAGE*.—The term “package” means a
 16 pack, box, carton, or container of any kind or, if no
 17 other container, any wrapping (including cellophane),
 18 in which cigarettes or smokeless tobacco are offered for
 19 sale, sold, or otherwise distributed to consumers.

20 (13) *POINT-OF-SALE*.—The term “point-of-sale”
 21 means any location at which a consumer can pur-
 22 chase or otherwise obtain cigarettes or smokeless to-
 23 bacco for personal consumption.

24 (14) *RETAILER*.—The term “retailer” means any
 25 person who sells cigarettes or smokeless tobacco to in-

1 *dividuals for personal consumption, or who operates*
 2 *a facility where self-service displays of tobacco prod-*
 3 *ucts are permitted.*

4 (15) *ROLL-YOUR-OWN TOBACCO.*—*The term “roll-*
 5 *your-own tobacco” means any tobacco which, because*
 6 *of its appearance, type, packaging, or labeling, is*
 7 *suitable for use and likely to be offered to, or pur-*
 8 *chased by, consumers as tobacco for making cigarettes.*

9 (16) *SECRETARY.*—*Except in title VII and where*
 10 *the context otherwise requires, the term “Secretary”*
 11 *means the Secretary of Health and Human Services.*

12 (17) *SMOKELESS TOBACCO.*—*The term “smoke-*
 13 *less tobacco” means any product that consists of cut,*
 14 *ground, powdered, or leaf tobacco that contains nico-*
 15 *tine and that is intended to be placed in the oral cav-*
 16 *ity.*

17 (18) *STATE.*—*The term “State” means any*
 18 *State of the United States and, for purposes of this*
 19 *Act, includes the District of Columbia, the Common-*
 20 *wealth of Puerto Rico, Guam, the Virgin Islands,*
 21 *American Samoa, Wake Island, Midway Islands,*
 22 *Kingman Reef, Johnston Atoll, the Northern Mariana*
 23 *Islands, and any other trust territory or possession of*
 24 *the United States.*

1 (19) *TOBACCO PRODUCT*.—*The term “tobacco*
2 *product” means cigarettes, cigarette tobacco, smokeless*
3 *tobacco, little cigars, roll-your-own tobacco, and fine*
4 *cut products.*

5 (20) *UNITED STATES*.—*The term “United*
6 *States” means the 50 States of the United States of*
7 *America and the District of Columbia, the Common-*
8 *wealth of Puerto Rico, Guam, the Virgin Islands,*
9 *American Samoa, Wake Island, Midway Islands,*
10 *Kingman Reef, Johnston Atoll, the Northern Mariana*
11 *Islands, and any other trust territory or possession of*
12 *the United States.*

13 (21) *MASTER SETTLEMENT AGREEMENT*.— *The*
14 *term “Master Settlement Agreement” means the*
15 *agreement either previously entered or to be entered*
16 *into by the States, the participating tobacco product*
17 *manufacturers, and the Trade Associations imple-*
18 *menting the June 20, 1997, Proposed Resolution, and*
19 *published in the Congressional Record for purposes of*
20 *this Act.*

21 (22) *PARTICIPATING TOBACCO PRODUCT MANU-*
22 *FACTURER*.— *The term “participating tobacco prod-*
23 *uct manufacturer” means—*

24 (A) *a tobacco product manufacturer that,*
25 *within 45 days after the date of enactment of*

1 *this Act (or within 45 days after the date on*
 2 *which such manufacturer first manufactures to-*
 3 *bacco products for sale or distribution in the*
 4 *United States, if such date is after the date of*
 5 *enactment of this Act)—*

6 *(i) becomes a signatory to the Master*
 7 *Settlement Agreement; and*

8 *(ii) enters into consent decrees with*
 9 *each State that made a request within the*
 10 *time period described in section 704(b); or*

11 *(B) a surviving entity established by a par-*
 12 *ticipating tobacco product manufacturer.*

13 **(23) NON-PARTICIPATING TOBACCO PRODUCT**
 14 **MANUFACTURER.—** *The term “non-participating to-*
 15 *bacco product manufacturer” means a tobacco prod-*
 16 *uct manufacturer that is not a participating tobacco*
 17 *product manufacturer.*

18 **(24) PROTOCOL.—** *The term “Protocol” means*
 19 *the agreement to be entered into by the Secretary of*
 20 *Health and Human Services with the participating*
 21 *tobacco product manufacturers under this Act.*

22 **(25) NATIONAL TOBACCO SETTLEMENT**
 23 **TRUST FUND.—** *The term “National Tobacco*
 24 *Settlement Trust Fund” means the trust*

1 ***fund established in section 9512 of the In-***
 2 ***ternal Revenue Code of 1986.***

3 ***SEC. 7. NOTIFICATION IF YOUTHFUL CIGARETTE SMOKING***
 4 ***RESTRICTIONS INCREASE YOUTHFUL PIPE***
 5 ***AND CIGAR SMOKING.***

6 *The Secretary shall notify the Congress if the Secretary*
 7 *determines that a decrease in underage use of tobacco prod-*
 8 *ucts resulting from the enactment of this Act has produced*
 9 *an increase in underage use of pipe tobacco and cigars.*

10 ***SEC. 8. LIABILITY LIMITATIONS DISAPPEAR IF TOBACCO***
 11 ***PRODUCT MANUFACTURER CHALLENGES AD-***
 12 ***VERTISING LIMITS.***

13 *If a tobacco product manufacturer, or any party act-*
 14 *ing on behalf of, in collusion with, or at the request of, a*
 15 *tobacco product manufacturer brings an action to have the*
 16 *advertising restrictions imposed on tobacco products under*
 17 *this Act, or the amendments made by this Act, or the appli-*
 18 *cation of those regulations to any person or circumstance*
 19 *held to be unconstitutional or otherwise invalid under the*
 20 *laws of the United States then the provisions of title VII*
 21 *relating to limitations on liability shall not apply to that*
 22 *manufacturer, beginning on the date on which the action*
 23 *is filed in a court of competent jurisdiction, and continuing*
 24 *until such time as the action is withdrawn or dismissed.*

1 **SEC. 9. FTC JURISDICTION NOT AFFECTED.**

2 (a) *IN GENERAL.*—*Except where expressly provided in*
3 *this Act, nothing in this Act shall be construed as limiting*
4 *or diminishing the authority of the Federal Trade Commis-*
5 *sion to enforce the laws under its jurisdiction with respect*
6 *to the advertising, sale, or distribution of tobacco products.*

7 (b) *ENFORCEMENT BY FTC.*—*Any advertising that*
8 *violates this Act, part 897 of title 21, Code of Federal Regu-*
9 *lations, or the Protocol is an unfair or deceptive act or*
10 *practice under section 5(a) of the Federal Trade Commis-*
11 *sion Act (15 U.S.C. 45(a)) and shall be considered a viola-*
12 *tion of a rule promulgated under section 18 of that Act (15*
13 *U.S.C. 57a).*

14 **SEC. 10. CONGRESSIONAL REVIEW PROVISIONS.**

15 *In accordance with section 801 of title 5, United States*
16 *Code, the Congress shall review, and may disapprove, any*
17 *rule under this Act that is subject to section 801. This sec-*
18 *tion does not apply to the rule set forth in part 897 of title*
19 *21, Code of Federal Regulations.*

**TITLE I—REGULATION OF THE
TOBACCO INDUSTRY**

***Subtitle A—Jurisdiction, etc., of
Food and Drug Administration***

**SEC. 101. AMENDMENT OF FEDERAL FOOD, DRUG, AND COS-
METIC ACT OF 1938.**

(a) *DEFINITION OF TOBACCO PRODUCTS.*—Section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321) is amended by adding at the end the following:

“(kk) The term ‘tobacco product’ means any product made or derived from tobacco that is intended for human consumption, including any component, part, or accessory of a tobacco product (except for raw materials other than tobacco used in manufacturing a component, part, or accessory of a tobacco product).”.

(b) *FDA AUTHORITY OVER TOBACCO PRODUCTS.*—The Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) is amended—

(1) by redesignating chapter IX as chapter X;

(2) by redesignating sections 901 through 907 as sections 1001 through 1007; and

(3) by inserting after section 803 the following:

1 **“CHAPTER IX—TOBACCO PRODUCTS**

2 **“SEC. 901. FDA AUTHORITY OVER TOBACCO PRODUCTS.**

3 “(a) *IN GENERAL.*—Tobacco products shall be regu-
4 lated by the Secretary under this chapter and shall not be
5 subject to the provisions of chapter V, unless—

6 “(1) such products are intended for use in the di-
7 agnosis, cure, mitigation, treatment, or prevention of
8 disease (within the meaning of section 201(g)(1)(B)
9 or section 201(h)(2)); or

10 “(2) a health claim is made for such products
11 under section 201(g)(1)(C) or 201(h)(3).

12 “(b) *APPLICABILITY.*—This chapter shall apply to all
13 tobacco products subject to the provisions of part 897 of title
14 21, Code of Federal Regulations, and to any other tobacco
15 products that the Secretary by regulation deems to be sub-
16 ject to this chapter.

17 “(c) *FDA RULE IN EFFECT.*—The provisions of part
18 897 of title 21, Code of Federal Regulations, shall be deemed
19 to be lawful and to have been lawfully promulgated under
20 the authority of this chapter. The provisions of such part
21 that are not in effect on the date of enactment of this chap-
22 ter shall take effect as in such part or upon such later date
23 as determined by the Secretary by order.

24 “(d) *SCOPE.*—

1 “(1) *Nothing in this chapter shall be construed*
2 *to affect the regulation of drugs and devices under*
3 *chapter V that are not tobacco products by the Sec-*
4 *retary under the Federal Food, Drug and Cosmetic*
5 *Act.*

6 “(2) *The provisions of this chapter shall not*
7 *apply to tobacco leaf that is not in the possession of*
8 *the manufacturer, or to the producers of tobacco leaf,*
9 *including tobacco growers, tobacco warehouses, and*
10 *tobacco grower cooperatives, nor shall any employee of*
11 *the Food and Drug Administration have any author-*
12 *ity whatsoever to enter onto a farm owned by a pro-*
13 *ducer of tobacco leaf without the written consent of*
14 *such producer. Notwithstanding any other provision*
15 *of this subparagraph, if a producer of tobacco leaf is*
16 *also a tobacco product manufacturer or controlled by*
17 *a tobacco product manufacturer, the producer shall be*
18 *subject to this chapter in the producer’s capacity as*
19 *a manufacturer. Nothing in this chapter shall be con-*
20 *strued to grant the Secretary authority to promulgate*
21 *regulations on any matter that involves the produc-*
22 *tion of tobacco leaf or a producer thereof, other than*
23 *activities by a manufacturer affecting production. For*
24 *purposes of the preceding sentence, the term ‘con-*
25 *trolled by’ means a member of the same controlled*

1 *group of corporations as that term is used in section*
 2 *52(a) of the Internal Revenue Code of 1986, or under*
 3 *common control within the meaning of the regulations*
 4 *promulgated under section 52(b) of such Code.*

5 **“SEC. 902. ADULTERATED TOBACCO PRODUCTS.**

6 *“A tobacco product shall be deemed to be adulterated*
 7 *if—*

8 *“(1) it consists in whole or in part of any filthy,*
 9 *putrid, or decomposed substance, or is otherwise con-*
 10 *taminated by any poisonous or deleterious substance*
 11 *that may render the product injurious to health;*

12 *“(2) it has been prepared, packed, or held under*
 13 *insanitary conditions whereby it may have been con-*
 14 *taminated with filth, or whereby it may have been*
 15 *rendered injurious to health;*

16 *“(3) its container is composed, in whole or in*
 17 *part, of any poisonous or deleterious substance which*
 18 *may render the contents injurious to health;*

19 *“(4) it is, or purports to be or is represented as,*
 20 *a tobacco product which is subject to a performance*
 21 *standard established under section 907 unless such to-*
 22 *bacco product is in all respects in conformity with*
 23 *such standard;*

1 “(5) it is required by section 910(a) to have pre-
2 market approval, is not exempt under section 906(f),
3 and does not have an approved application in effect;

4 “(6) the methods used in, or the facilities or con-
5 trols used for, its manufacture, packing or storage are
6 not in conformity with applicable requirements under
7 section 906(e)(1) or an applicable condition pre-
8 scribed by an order under section 906(e)(2); or

9 “(7) it is a tobacco product for which an exemp-
10 tion has been granted under section 906(f) for inves-
11 tigational use and the person who was granted such
12 exemption or any investigator who uses such tobacco
13 product under such exemption fails to comply with a
14 requirement prescribed by or under such section.

15 **“SEC. 903. MISBRANDED TOBACCO PRODUCTS.**

16 “(a) *IN GENERAL.*—A tobacco product shall be deemed
17 to be misbranded—

18 “(1) if its labeling is false or misleading in any
19 particular;

20 “(2) if in package form unless it bears a label
21 containing—

22 “(A) the name and place of business of the
23 tobacco product manufacturer, packer, or dis-
24 tributor; and

1 “(B) an accurate statement of the quantity
2 of the contents in terms of weight, measure, or
3 numerical count,
4 except that under subparagraph (B) of this para-
5 graph reasonable variations shall be permitted, and
6 exemptions as to small packages shall be established,
7 by regulations prescribed by the Secretary;

8 “(3) if any word, statement, or other informa-
9 tion required by or under authority of this chapter to
10 appear on the label or labeling is not prominently
11 placed thereon with such conspicuousness (as com-
12 pared with other words, statements or designs in the
13 labeling) and in such terms as to render it likely to
14 be read and understood by the ordinary individual
15 under customary conditions of purchase and use;

16 “(4) if it has an established name, unless its
17 label bears, to the exclusion of any other nonpropri-
18 etary name, its established name prominently printed
19 in type as required by the Secretary by regulation;

20 “(5) if the Secretary has issued regulations re-
21 quiring that its labeling bear adequate directions for
22 use, or adequate warnings against use by children,
23 that are necessary for the protection of users unless its
24 labeling conforms in all respects to such regulations;

1 “(6) if it was manufactured, prepared, propa-
2 gated, compounded, or processed in any State in an
3 establishment not duly registered under section
4 905(b), if it was not included in a list required by
5 section 905(i), if a notice or other information re-
6 specting it was not provided as required by such sec-
7 tion or section 905(j), or if it does not bear such sym-
8 bols from the uniform system for identification of to-
9 bacco products prescribed under section 905(e) as the
10 Secretary by regulation requires;

11 “(7) if, in the case of any tobacco product dis-
12 tributed or offered for sale in any State—

13 “(A) its advertising is false or misleading
14 in any particular; or

15 “(B) it is sold, distributed, or used in viola-
16 tion of regulations prescribed under section
17 906(d);

18 “(8) unless, in the case of any tobacco product
19 distributed or offered for sale in any State, the manu-
20 facturer, packer, or distributor thereof includes in all
21 advertisements and other descriptive printed matter
22 issued or caused to be issued by the manufacturer,
23 packer, or distributor with respect to that tobacco
24 product—

1 “(A) a true statement of the tobacco prod-
2 uct’s established name as defined in paragraph
3 (4) of this subsection, printed prominently; and

4 “(B) a brief statement of—

5 “(i) the uses of the tobacco product and
6 relevant warnings, precautions, side effects,
7 and contraindications; and

8 “(ii) in the case of specific tobacco
9 products made subject to a finding by the
10 Secretary after notice and opportunity for
11 comment that such action is necessary to
12 protect the public health, a full description
13 of the components of such tobacco product or
14 the formula showing quantitatively each in-
15 gredient of such tobacco product to the ex-
16 tent required in regulations which shall be
17 issued by the Secretary after an oppor-
18 tunity for a hearing;

19 “(9) if it is a tobacco product subject to a per-
20 formance standard established under section 907, un-
21 less it bears such labeling as may be prescribed in
22 such performance standard; or

23 “(10) if there was a failure or refusal—

24 “(A) to comply with any requirement pre-
25 scribed under section 904 or 908;

1 “(B) to furnish any material or informa-
2 tion required by or under section 909; or

3 “(C) to comply with a requirement under
4 section 912.

5 “(b) *PRIOR APPROVAL OF STATEMENTS ON LABEL.*—
6 *The Secretary may, by regulation, require prior approval*
7 *of statements made on the label of a tobacco product. No*
8 *regulation issued under this subsection may require prior*
9 *approval by the Secretary of the content of any advertise-*
10 *ment and no advertisement of a tobacco product, published*
11 *after the date of enactment of the National Tobacco Policy*
12 *and Youth Smoking Reduction Act shall, with respect to*
13 *the matters specified in this section or covered by regula-*
14 *tions issued hereunder, be subject to the provisions of sec-*
15 *tions 12 through 15 of the Federal Trade Commission Act*
16 *(15 U.S.C. 52 through 55). This subsection does not apply*
17 *to any printed matter which the Secretary determines to*
18 *be labeling as defined in section 201(m).*

19 **“SEC. 904. SUBMISSION OF HEALTH INFORMATION TO THE**
20 **SECRETARY.**

21 “(a) *REQUIREMENT.*—*Not later than 6 months after*
22 *the date of enactment of the National Tobacco Policy and*
23 *Youth Smoking Reduction Act, each tobacco product manu-*
24 *facturer or importer of tobacco products, or agents thereof,*
25 *shall submit to the Secretary the following information:*

1 “(1) *A listing of all tobacco ingredients, sub-*
2 *stances and compounds that are, on such date, added*
3 *by the manufacturer to the tobacco, paper, filter, or*
4 *other component of each tobacco product by brand*
5 *and by quantity in each brand and subbrand.*

6 “(2) *A description of the content, delivery, and*
7 *form of nicotine in each tobacco product measured in*
8 *milligrams of nicotine.*

9 “(3) *All documents (including underlying sci-*
10 *entific information) relating to research activities,*
11 *and research findings, conducted, supported, or pos-*
12 *sessed by the manufacturer (or agents thereof) on the*
13 *health, behavioral, or physiologic effects of tobacco*
14 *products, their constituents, ingredients, and compo-*
15 *nents, and tobacco additives, described in paragraph*
16 *(1).*

17 “(4) *All documents (including underlying sci-*
18 *entific information) relating to research activities,*
19 *and research findings, conducted, supported, or pos-*
20 *sessed by the manufacturer that relate to the issue of*
21 *whether a reduction in risk to health from tobacco*
22 *products can occur upon the employment of tech-*
23 *nology available or known to the manufacturer.*

1 “(5) *All documents (including underlying sci-*
2 *entific information) relating to marketing research*
3 *involving the use of tobacco products.*

4 *An importer of a tobacco product not manufactured in the*
5 *United States shall supply the information required of a*
6 *tobacco product manufacturer under this subsection.*

7 “(b) *ANNUAL SUBMISSION.—A tobacco product manu-*
8 *facturer or importer that is required to submit information*
9 *under subsection (a) shall update such information on an*
10 *annual basis under a schedule determined by the Secretary.*

11 “(c) *TIME FOR SUBMISSION.—*

12 “(1) *NEW PRODUCTS.—At least 90 days prior to*
13 *the delivery for introduction into interstate commerce*
14 *of a tobacco product not on the market on the date*
15 *of enactment of this chapter, the manufacturer of such*
16 *product shall provide the information required under*
17 *subsection (a) and such product shall be subject to the*
18 *annual submission under subsection (b).*

19 “(2) *MODIFICATION OF EXISTING PRODUCTS.—If*
20 *at any time a tobacco product manufacturer adds to*
21 *its tobacco products a new tobacco additive, increases*
22 *or decreases the quantity of an existing tobacco addi-*
23 *tive or the nicotine content, delivery, or form, or*
24 *eliminates a tobacco additive from any tobacco prod-*
25 *uct, the manufacturer shall within 60 days of such*

1 *action so advise the Secretary in writing and ref-*
 2 *erence such modification in submissions made under*
 3 *subsection (b).*

4 **“SEC. 905. ANNUAL REGISTRATION.**

5 *“(a) DEFINITIONS.—As used in this section—*

6 *“(1) the term ‘manufacture, preparation,*
 7 *compounding, or processing’ shall include repackag-*
 8 *ing or otherwise changing the container, wrapper, or*
 9 *labeling of any tobacco product package in further-*
 10 *ance of the distribution of the tobacco product from*
 11 *the original place of manufacture to the person who*
 12 *makes final delivery or sale to the ultimate consumer*
 13 *or user; and*

14 *“(2) the term ‘name’ shall include in the case of*
 15 *a partnership the name of each partner and, in the*
 16 *case of a corporation, the name of each corporate offi-*
 17 *cer and director, and the State of incorporation.*

18 *“(b) REGISTRATION BY OWNERS AND OPERATORS.—*
 19 *On or before December 31 of each year every person who*
 20 *owns or operates any establishment in any State engaged*
 21 *in the manufacture, preparation, compounding, or process-*
 22 *ing of a tobacco product or tobacco products shall register*
 23 *with the Secretary the name, places of business, and all such*
 24 *establishments of that person.*

1 “(c) *REGISTRATION OF NEW OWNERS AND OPERA-*
 2 *TORS.—Every person upon first engaging in the manufac-*
 3 *ture, preparation, compounding, or processing of a tobacco*
 4 *product or tobacco products in any establishment owned or*
 5 *operated in any State by that person shall immediately reg-*
 6 *ister with the Secretary that person’s name, place of busi-*
 7 *ness, and such establishment.*

8 “(d) *REGISTRATION OF ADDED ESTABLISHMENTS.—*
 9 *Every person required to register under subsection (b) or*
 10 *(c) shall immediately register with the Secretary any addi-*
 11 *tional establishment which that person owns or operates in*
 12 *any State and in which that person begins the manufacture,*
 13 *preparation, compounding, or processing of a tobacco prod-*
 14 *uct or tobacco products.*

15 “(e) *UNIFORM PRODUCT IDENTIFICATION SYSTEM.—*
 16 *The Secretary may by regulation prescribe a uniform sys-*
 17 *tem for the identification of tobacco products and may re-*
 18 *quire that persons who are required to list such tobacco*
 19 *products under subsection (i) of this section shall list such*
 20 *tobacco products in accordance with such system.*

21 “(f) *PUBLIC ACCESS TO REGISTRATION INFORMA-*
 22 *TION.—The Secretary shall make available for inspection,*
 23 *to any person so requesting, any registration filed under*
 24 *this section.*

1 “(g) *BIENNIAL INSPECTION OF REGISTERED ESTAB-*
2 *LISHMENTS.*—*Every establishment in any State registered*
3 *with the Secretary under this section shall be subject to in-*
4 *spection under section 704, and every such establishment*
5 *engaged in the manufacture, compounding, or processing*
6 *of a tobacco product or tobacco products shall be so in-*
7 *spected by one or more officers or employees duly designated*
8 *by the Secretary at least once in the 2-year period begin-*
9 *ning with the date of registration of such establishment*
10 *under this section and at least once in every successive 2-*
11 *year period thereafter.*

12 “(h) *FOREIGN ESTABLISHMENTS MAY REGISTER.*—
13 *Any establishment within any foreign country engaged in*
14 *the manufacture, preparation, compounding, or processing*
15 *of a tobacco product or tobacco products, may register under*
16 *this section under regulations promulgated by the Sec-*
17 *retary. Such regulations shall require such establishment to*
18 *provide the information required by subsection (i) of this*
19 *section and shall include provisions for registration of any*
20 *such establishment upon condition that adequate and effec-*
21 *tive means are available, by arrangement with the govern-*
22 *ment of such foreign country or otherwise, to enable the Sec-*
23 *retary to determine from time to time whether tobacco prod-*
24 *ucts manufactured, prepared, compounded, or processed in*
25 *such establishment, if imported or offered for import into*

1 *the United States, shall be refused admission on any of the*
2 *grounds set forth in section 801(a).*

3 “(i) *REGISTRATION INFORMATION.*—

4 “(1) *PRODUCT LIST.*—Every person who reg-
5 *isters with the Secretary under subsection (b), (c), or*
6 *(d) of this section shall, at the time of registration*
7 *under any such subsection, file with the Secretary a*
8 *list of all tobacco products which are being manufac-*
9 *tured, prepared, compounded, or processed by that*
10 *person for commercial distribution and which has not*
11 *been included in any list of tobacco products filed by*
12 *that person with the Secretary under this paragraph*
13 *or paragraph (2) before such time of registration.*
14 *Such list shall be prepared in such form and manner*
15 *as the Secretary may prescribe and shall be accom-*
16 *panied by—*

17 “(A) *in the case of a tobacco product con-*
18 *tained in the applicable list with respect to*
19 *which a performance standard has been estab-*
20 *lished under section 907 or which is subject to*
21 *section 910, a reference to the authority for the*
22 *marketing of such tobacco product and a copy of*
23 *all labeling for such tobacco product;*

24 “(B) *in the case of any other tobacco prod-*
25 *uct contained in an applicable list, a copy of all*

1 *consumer information and other labeling for*
2 *such tobacco product, a representative sampling*
3 *of advertisements for such tobacco product, and,*
4 *upon request made by the Secretary for good*
5 *cause, a copy of all advertisements for a particu-*
6 *lar tobacco product; and*

7 *“(C) if the registrant filing a list has deter-*
8 *mined that a tobacco product contained in such*
9 *list is not subject to a performance standard es-*
10 *tablished under section 907, a brief statement of*
11 *the basis upon which the registrant made such*
12 *determination if the Secretary requests such a*
13 *statement with respect to that particular tobacco*
14 *product.*

15 *“(2) BIENNIAL REPORT OF ANY CHANGE IN*
16 *PRODUCT LIST.—Each person who registers with the*
17 *Secretary under this section shall report to the Sec-*
18 *retary once during the month of June of each year*
19 *and once during the month of December of each year*
20 *the following:*

21 *“(A) A list of each tobacco product intro-*
22 *duced by the registrant for commercial distribu-*
23 *tion which has not been included in any list pre-*
24 *viously filed by that person with the Secretary*
25 *under this subparagraph or paragraph (1) of*

1 *this subsection. A list under this subparagraph*
2 *shall list a tobacco product by its established*
3 *name and shall be accompanied by the other in-*
4 *formation required by paragraph (1).*

5 *“(B) If since the date the registrant last*
6 *made a report under this paragraph that person*
7 *has discontinued the manufacture, preparation,*
8 *compounding, or processing for commercial dis-*
9 *tribution of a tobacco product included in a list*
10 *filed under subparagraph (A) or paragraph (1),*
11 *notice of such discontinuance, the date of such*
12 *discontinuance, and the identity of its estab-*
13 *lished name.*

14 *“(C) If since the date the registrant reported*
15 *under subparagraph (B) a notice of discontinu-*
16 *ance that person has resumed the manufacture,*
17 *preparation, compounding, or processing for*
18 *commercial distribution of the tobacco product*
19 *with respect to which such notice of discontinu-*
20 *ance was reported, notice of such resumption, the*
21 *date of such resumption, the identity of such to-*
22 *bacco product by established name, and other in-*
23 *formation required by paragraph (1), unless the*
24 *registrant has previously reported such resump-*
25 *tion to the Secretary under this subparagraph.*

1 “(D) *Any material change in any informa-*
 2 *tion previously submitted under this paragraph*
 3 *or paragraph (1).*

4 “(j) *REPORT PRECEDING INTRODUCTION OF CERTAIN*
 5 *SUBSTANTIALLY EQUIVALENT PRODUCTS INTO INTER-*
 6 *STATE COMMERCE.—*

7 “(1) *IN GENERAL.—Each person who is required*
 8 *to register under this section and who proposes to*
 9 *begin the introduction or delivery for introduction*
 10 *into interstate commerce for commercial distribution*
 11 *of a tobacco product intended for human use that was*
 12 *not commercially marketed (other than for test mar-*
 13 *keting) in the United States as of August 11, 1995,*
 14 *as defined by the Secretary by regulation shall, at*
 15 *least 90 days before making such introduction or de-*
 16 *livery, report to the Secretary (in such form and*
 17 *manner as the Secretary shall by regulation pre-*
 18 *scribe)—*

19 “(A) *the basis for such person’s determina-*
 20 *tion that the tobacco product is substantially*
 21 *equivalent, within the meaning of section 910, to*
 22 *a tobacco product commercially marketed (other*
 23 *than for test marketing) in the United States as*
 24 *of August 11, 1995, that is in compliance with*
 25 *the requirements of this Act; and*

1 “(B) action taken by such person to comply
 2 with the requirements under section 907 that are
 3 applicable to the tobacco product.

4 “(2) APPLICATION TO CERTAIN POST-AUGUST
 5 11TH PRODUCTS.—A report under this subsection for
 6 a tobacco product that was first introduced or deliv-
 7 ered for introduction into interstate commerce for
 8 commercial distribution in the United States after
 9 August 11, 1995, and before the date of enactment of
 10 the National Tobacco Policy and Youth Smoking Re-
 11 duction Act shall be submitted to the Secretary within
 12 6 months after the date of enactment of that Act.

13 **“SEC. 906. GENERAL PROVISIONS RESPECTING CONTROL**
 14 **OF TOBACCO PRODUCTS.**

15 “(a) IN GENERAL.—Any requirement established by or
 16 under section 902, 903, 905, or 909 applicable to a tobacco
 17 product shall apply to such tobacco product until the appli-
 18 cability of the requirement to the tobacco product has been
 19 changed by action taken under section 907, section 910, or
 20 subsection (d) of this section, and any requirement estab-
 21 lished by or under section 902, 903, 905, or 909 which is
 22 inconsistent with a requirement imposed on such tobacco
 23 product under section 907, section 910, or subsection (d)
 24 of this section shall not apply to such tobacco product.

1 “(b) *INFORMATION ON PUBLIC ACCESS AND COM-*
 2 *MENT.—Each notice of proposed rulemaking under section*
 3 *907, 908, 909, or 910, or under this section, any other notice*
 4 *which is published in the Federal Register with respect to*
 5 *any other action taken under any such section and which*
 6 *states the reasons for such action, and each publication of*
 7 *findings required to be made in connection with rulemaking*
 8 *under any such section shall set forth—*

9 “(1) *the manner in which interested persons may*
 10 *examine data and other information on which the no-*
 11 *tice or findings is based; and*

12 “(2) *the period within which interested persons*
 13 *may present their comments on the notice or findings*
 14 *(including the need therefor) orally or in writing,*
 15 *which period shall be at least 60 days but may not*
 16 *exceed 90 days unless the time is extended by the Sec-*
 17 *retary by a notice published in the Federal Register*
 18 *stating good cause therefor.*

19 “(c) *LIMITED CONFIDENTIALITY OF INFORMATION.—*
 20 *Any information reported to or otherwise obtained by the*
 21 *Secretary or the Secretary’s representative under section*
 22 *904, 907, 908, 909, or 910 or 704, or under subsection (e)*
 23 *or (f) of this section, which is exempt from disclosure under*
 24 *subsection (a) of section 552 of title 5, United States Code,*
 25 *by reason of subsection (b)(4) of that section shall be consid-*

1 *ered confidential and shall not be disclosed, except that the*
 2 *information may be disclosed to other officers or employees*
 3 *concerned with carrying out this chapter, or when relevant*
 4 *in any proceeding under this chapter.*

5 “(d) *RESTRICTIONS.*—

6 “(1) *The Secretary may by regulation require*
 7 *that a tobacco product be restricted to sale, distribu-*
 8 *tion, or use upon such conditions, including restric-*
 9 *tions on the access to, and the advertising and pro-*
 10 *motion of, the tobacco product, as the Secretary may*
 11 *prescribe in such regulation if, because of its poten-*
 12 *tiality for harmful effect or the collateral measures*
 13 *necessary to its use, the Secretary determines that*
 14 *such regulation would be appropriate for the protec-*
 15 *tion of the public health. The finding as to whether*
 16 *such regulation would be appropriate for the protec-*
 17 *tion of the public health shall be determined with re-*
 18 *spect to the risks and benefits to the population as a*
 19 *whole, including users and non-users of the tobacco*
 20 *product, and taking into account—*

21 “(A) *the increased or decreased likelihood*
 22 *that existing users of tobacco products will stop*
 23 *using such products; and*

1 “(B) the increased or decreased likelihood
2 that those who do not use tobacco products will
3 start using such products.

4 No such condition may require that the sale or dis-
5 tribution of a tobacco product be limited to the writ-
6 ten or oral authorization of a practitioner licensed by
7 law to prescribe medical products.

8 “(2) The label of a tobacco product shall bear
9 such appropriate statements of the restrictions re-
10 quired by a regulation under subsection (a) as the
11 Secretary may in such regulation prescribe.

12 “(3) Because of the importance of any decision
13 by the Secretary to restrict the sale of any class of to-
14 bacco products on the market on the date of enact-
15 ment of the National Tobacco Policy and Youth
16 Smoking Reduction Act to specified categories of re-
17 tail outlets, it is appropriate for the Congress to have
18 the opportunity to review such a decision. Therefore,
19 any such restriction may not take effect before the
20 date that is 2 years after the President notifies the
21 Congress that a final regulation imposing the restric-
22 tion has been issued.

23 “(e) GOOD MANUFACTURING PRACTICE REQUIRE-
24 MENTS.—

1 “(1) *METHODS, FACILITIES, AND CONTROLS TO*
2 *CONFORM.*—

3 “(A) *The Secretary may, in accordance*
4 *with subparagraph (B), prescribe regulations re-*
5 *quiring that the methods used in, and the facili-*
6 *ties and controls used for, the manufacture, pre-*
7 *production design validation (including a proc-*
8 *ess to assess the performance of a tobacco prod-*
9 *uct), packing and storage of a tobacco product,*
10 *conform to current good manufacturing practice,*
11 *as prescribed in such regulations, to assure that*
12 *the public health is protected and that the to-*
13 *bacco product is in compliance with this chapter.*

14 “(B) *The Secretary shall—*

15 “(i) *before promulgating any regula-*
16 *tion under subparagraph (A), afford the To-*
17 *bacco Products Scientific Advisory Commit-*
18 *tee established under section 915 an oppor-*
19 *tunity to submit recommendations with re-*
20 *spect to the regulation proposed to be pro-*
21 *mulgated;*

22 “(ii) *before promulgating any regula-*
23 *tion under subparagraph (A), afford oppor-*
24 *tunity for an oral hearing;*

1 “(iii) provide the advisory committee a
 2 reasonable time to make its recommendation
 3 with respect to proposed regulations under
 4 subparagraph (A); and

5 “(iv) in establishing the effective date
 6 of a regulation promulgated under this sub-
 7 section, take into account the differences in
 8 the manner in which the different types of
 9 tobacco products have historically been pro-
 10 duced, the financial resources of the dif-
 11 ferent tobacco product manufacturers, and
 12 the state of their existing manufacturing fa-
 13 cilities; and shall provide for a reasonable
 14 period of time for such manufacturers to
 15 conform to good manufacturing practices.

16 “(2) *EXEMPTIONS; VARIANCES.*—

17 “(A) Any person subject to any requirement
 18 prescribed under paragraph (1) may petition the
 19 Secretary for a permanent or temporary exemp-
 20 tion or variance from such requirement. Such a
 21 petition shall be submitted to the Secretary in
 22 such form and manner as the Secretary shall
 23 prescribe and shall—

24 “(i) in the case of a petition for an ex-
 25 emption from a requirement, set forth the

1 *basis for the petitioner’s determination that*
2 *compliance with the requirement is not re-*
3 *quired to assure that the tobacco product*
4 *will be in compliance with this chapter;*

5 “(ii) *in the case of a petition for a*
6 *variance from a requirement, set forth the*
7 *methods proposed to be used in, and the fa-*
8 *ilities and controls proposed to be used for,*
9 *the manufacture, packing, and storage of*
10 *the tobacco product in lieu of the methods,*
11 *facilities, and controls prescribed by the re-*
12 *quirement; and*

13 “(iii) *contain such other information*
14 *as the Secretary shall prescribe.*

15 “(B) *The Secretary may refer to the To-*
16 *bacco Products Scientific Advisory Committee es-*
17 *tablished under section 915 any petition submit-*
18 *ted under subparagraph (A). The advisory com-*
19 *mittee shall report its recommendations to the*
20 *Secretary with respect to a petition referred to it*
21 *within 60 days after the date of the petition’s re-*
22 *ferral. Within 60 days after—*

23 “(i) *the date the petition was submit-*
24 *ted to the Secretary under subparagraph*
25 *(A); or*

1 “(ii) the day after the petition was re-
2 ferred to an advisory committee,
3 whichever occurs later, the Secretary shall by
4 order either deny the petition or approve it.

5 “(C) The Secretary may approve—

6 “(i) a petition for an exemption for a
7 tobacco product from a requirement if the
8 Secretary determines that compliance with
9 such requirement is not required to assure
10 that the tobacco product will be in compli-
11 ance with this chapter; and

12 “(ii) a petition for a variance for a to-
13 bacco product from a requirement if the
14 Secretary determines that the methods to be
15 used in, and the facilities and controls to be
16 used for, the manufacture, packing, and
17 storage of the tobacco product in lieu of the
18 methods, controls, and facilities prescribed
19 by the requirement are sufficient to assure
20 that the tobacco product will be in compli-
21 ance with this chapter.

22 “(D) An order of the Secretary approving a
23 petition for a variance shall prescribe such con-
24 ditions respecting the methods used in, and the
25 facilities and controls used for, the manufacture,

1 *packing, and storage of the tobacco product to be*
 2 *granted the variance under the petition as may*
 3 *be necessary to assure that the tobacco product*
 4 *will be in compliance with this chapter.*

5 “(E) *After the issuance of an order under*
 6 *subparagraph (B) respecting a petition, the peti-*
 7 *tioner shall have an opportunity for an informal*
 8 *hearing on such order.*

9 “(3) *Compliance with requirements under this*
 10 *subsection shall not be required before the period end-*
 11 *ing 3 years after the date of enactment of the Na-*
 12 *tional Tobacco Policy and Youth Smoking Reduction*
 13 *Act.*

14 “(f) *EXEMPTION FOR INVESTIGATIONAL USE.—The*
 15 *Secretary may exempt tobacco products intended for inves-*
 16 *tigational use from this chapter under such conditions as*
 17 *the Secretary may prescribe by regulation .*

18 “(g) *RESEARCH AND DEVELOPMENT.—The Secretary*
 19 *may enter into contracts for research, testing, and dem-*
 20 *onstrations respecting tobacco products and may obtain to-*
 21 *bacco products for research, testing, and demonstration pur-*
 22 *poses without regard to section 3324(a) and (b) of title 31,*
 23 *United States Code, and section 5 of title 41, United States*
 24 *Code.*

1 **“SEC. 907. PERFORMANCE STANDARDS.**

2 “(a) *IN GENERAL.*—

3 “(1) *FINDING REQUIRED.*—*The Secretary may*
4 *adopt performance standards for a tobacco product if*
5 *the Secretary finds that a performance standard is*
6 *appropriate for the protection of the public health.*
7 *This finding shall be determined with respect to the*
8 *risks and benefits to the population as a whole, in-*
9 *cluding users and non-users of the tobacco product,*
10 *and taking into account—*

11 “(A) *the increased or decreased likelihood*
12 *that existing users of tobacco products will stop*
13 *using such products; and*

14 “(B) *the increased or decreased likelihood*
15 *that those who do not use tobacco products will*
16 *start using such products.*

17 “(2) *CONTENT OF PERFORMANCE STANDARDS.*—
18 *A performance standard established under this section*
19 *for a tobacco product—*

20 “(A) *shall include provisions to provide per-*
21 *formance that is appropriate for the protection*
22 *of the public health, including provisions, where*
23 *appropriate—*

24 “(i) *for the reduction or elimination of*
25 *nicotine yields of the product;*

1 “(ii) for the reduction or elimination
2 of other constituents or harmful components
3 of the product; or

4 “(iii) relating to any other require-
5 ment under (B);

6 “(B) shall, where necessary to be appro-
7 priate for the protection of the public health, in-
8 clude—

9 “(i) provisions respecting the construc-
10 tion, components, ingredients, and prop-
11 erties of the tobacco product;

12 “(ii) provisions for the testing (on a
13 sample basis or, if necessary, on an individ-
14 ual basis) of the tobacco product;

15 “(iii) provisions for the measurement
16 of the performance characteristics of the to-
17 bacco product;

18 “(iv) provisions requiring that the re-
19 sults of each or of certain of the tests of the
20 tobacco product required to be made under
21 clause (ii) show that the tobacco product is
22 in conformity with the portions of the
23 standard for which the test or tests were re-
24 quired; and

1 “(v) a provision requiring that the sale
2 and distribution of the tobacco product be
3 restricted but only to the extent that the sale
4 and distribution of a tobacco product may
5 be restricted under a regulation under sec-
6 tion 906(d); and

7 “(C) shall, where appropriate, require the
8 use and prescribe the form and content of label-
9 ing for the proper use of the tobacco product.

10 “(3) *PERIODIC RE-EVALUATION OF PERFORM-*
11 *ANCE STANDARDS.*—*The Secretary shall provide for*
12 *periodic evaluation of performance standards estab-*
13 *lished under this section to determine whether such*
14 *standards should be changed to reflect new medical,*
15 *scientific, or other technological data. The Secretary*
16 *may provide for testing under paragraph (2) by any*
17 *person.*

18 “(4) *INVOLVEMENT OF OTHER AGENCIES; IN-*
19 *FORMED PERSONS.*—*In carrying out duties under this*
20 *section, the Secretary shall, to the maximum extent*
21 *practicable—*

22 “(A) *use personnel, facilities, and other*
23 *technical support available in other Federal*
24 *agencies;*

1 “(B) consult with other Federal agencies
 2 concerned with standard-setting and other na-
 3 tionally or internationally recognized standard-
 4 setting entities; and

5 “(C) invite appropriate participation,
 6 through joint or other conferences, workshops, or
 7 other means, by informed persons representative
 8 of scientific, professional, industry, or consumer
 9 organizations who in the Secretary’s judgment
 10 can make a significant contribution.

11 “(b) *ESTABLISHMENT OF STANDARDS.*—

12 “(1) *NOTICE.*—

13 “(A) The Secretary shall publish in the Fed-
 14 eral Register a notice of proposed rulemaking for
 15 the establishment, amendment, or revocation of
 16 any performance standard for a tobacco product.

17 “(B) A notice of proposed rulemaking for
 18 the establishment or amendment of a perform-
 19 ance standard for a tobacco product shall—

20 “(i) set forth a finding with supporting
 21 justification that the performance standard
 22 is appropriate for the protection of the pub-
 23 lic health;

24 “(ii) set forth proposed findings with
 25 respect to the risk of illness or injury that

1 the performance standard is intended to re-
2 duce or eliminate; and

3 “(iii) invite interested persons to sub-
4 mit an existing performance standard for
5 the tobacco product, including a draft or
6 proposed performance standard, for consid-
7 eration by the Secretary.

8 “(C) A notice of proposed rulemaking for
9 the revocation of a performance standard shall
10 set forth a finding with supporting justification
11 that the performance standard is no longer nec-
12 essary to be appropriate for the protection of the
13 public health.

14 “(D) The Secretary shall consider all infor-
15 mation submitted in connection with a proposed
16 standard, including information concerning the
17 countervailing effects of the performance stand-
18 ard on the health of adolescent tobacco users,
19 adult tobacco users, or non-tobacco users, such as
20 the creation of a significant demand for contra-
21 band or other tobacco products that do not meet
22 the requirements of this chapter and the signifi-
23 cance of such demand, and shall issue the stand-
24 ard if the Secretary determines that the standard

1 *would be appropriate for the protection of the*
2 *public health.*

3 “(E) *The Secretary shall provide for a com-*
4 *ment period of not less than 60 days.*

5 “(2) *PROMULGATION.—*

6 “(A) *After the expiration of the period for*
7 *comment on a notice of proposed rulemaking*
8 *published under paragraph (1) respecting a per-*
9 *formance standard and after consideration of*
10 *such comments and any report from the Tobacco*
11 *Products Scientific Advisory Committee under*
12 *section 915, the Secretary shall—*

13 “(i) *promulgate a regulation establish-*
14 *ing a performance standard and publish in*
15 *the Federal Register findings on the matters*
16 *referred to in paragraph (1); or*

17 “(ii) *publish a notice terminating the*
18 *proceeding for the development of the stand-*
19 *ard together with the reasons for such ter-*
20 *mination.*

21 “(B) *A regulation establishing a perform-*
22 *ance standard shall set forth the date or dates*
23 *upon which the standard shall take effect, but no*
24 *such regulation may take effect before one year*
25 *after the date of its publication unless the Sec-*

1 *retary determines that an earlier effective date is*
 2 *necessary for the protection of the public health.*
 3 *Such date or dates shall be established so as to*
 4 *minimize, consistent with the public health, eco-*
 5 *nomie loss to, and disruption or dislocation of,*
 6 *domestic and international trade.*

7 “(3) *SPECIAL RULE FOR STANDARD BANNING*
 8 *CLASS OF PRODUCT OR ELIMINATING NICOTINE CON-*
 9 *TENT.—Because of the importance of a decision of the*
 10 *Secretary to issue a regulation establishing a per-*
 11 *formance standard—*

12 “(A) *eliminating all cigarettes, all smokeless*
 13 *tobacco products, or any similar class of tobacco*
 14 *products, or*

15 “(B) *requiring the reduction of nicotine*
 16 *yields of a tobacco product to zero,*
 17 *it is appropriate for the Congress to have the oppor-*
 18 *tunity to review such a decision. Therefore, any such*
 19 *standard may not take effect before a date that is 2*
 20 *years after the President notifies the Congress that a*
 21 *final regulation imposing the restriction has been*
 22 *issued.*

23 “(4) *AMENDMENT; REVOCATION.—*

24 “(A) *The Secretary, upon the Secretary’s*
 25 *own initiative or upon petition of an interested*

1 *person may by a regulation, promulgated in ac-*
 2 *cordance with the requirements of paragraphs*
 3 *(1) and (2)(B) of this subsection, amend or re-*
 4 *voke a performance standard.*

5 *“(B) The Secretary may declare a proposed*
 6 *amendment of a performance standard to be ef-*
 7 *fective on and after its publication in the Fed-*
 8 *eral Register and until the effective date of any*
 9 *final action taken on such amendment if the Sec-*
 10 *retary determines that making it so effective is*
 11 *in the public interest.*

12 *“(5) REFERENCE TO ADVISORY COMMITTEE.—*
 13 *The Secretary—*

14 *“(A) may, on the Secretary’s own initiative,*
 15 *refer a proposed regulation for the establishment,*
 16 *amendment, or revocation of a performance*
 17 *standard; or*

18 *“(B) shall, upon the request of an interested*
 19 *person which demonstrates good cause for refer-*
 20 *ral and which is made before the expiration of*
 21 *the period for submission of comments on such*
 22 *proposed regulation,*

23 *refer such proposed regulation to the Tobacco Prod-*
 24 *ucts Scientific Advisory Committee established under*
 25 *section 915, for a report and recommendation with*

1 *respect to any matter involved in the proposed regula-*
2 *tion which requires the exercise of scientific judgment.*
3 *If a proposed regulation is referred under this sub-*
4 *paragraph to the advisory committee, the Secretary*
5 *shall provide the advisory committee with the data*
6 *and information on which such proposed regulation is*
7 *based. The advisory committee shall, within 60 days*
8 *after the referral of a proposed regulation and after*
9 *independent study of the data and information fur-*
10 *nished to it by the Secretary and other data and in-*
11 *formation before it, submit to the Secretary a report*
12 *and recommendation respecting such regulation, to-*
13 *gether with all underlying data and information and*
14 *a statement of the reason or basis for the rec-*
15 *ommendation. A copy of such report and rec-*
16 *ommendation shall be made public by the Secretary.*

17 **“SEC. 908. NOTIFICATION AND OTHER REMEDIES.**

18 “(a) *NOTIFICATION.*—*If the Secretary determines*
19 *that—*

20 “(1) *a tobacco product which is introduced or de-*
21 *livered for introduction into interstate commerce for*
22 *commercial distribution presents an unreasonable risk*
23 *of substantial harm to the public health; and*

24 “(2) *notification under this subsection is nec-*
25 *essary to eliminate the unreasonable risk of such*

1 *harm and no more practicable means is available*
2 *under the provisions of this chapter (other than this*
3 *section) to eliminate such risk,*
4 *the Secretary may issue such order as may be necessary*
5 *to assure that adequate notification is provided in an ap-*
6 *propriate form, by the persons and means best suited under*
7 *the circumstances involved, to all persons who should prop-*
8 *erly receive such notification in order to eliminate such*
9 *risk. The Secretary may order notification by any appro-*
10 *priate means, including public service announcements. Be-*
11 *fore issuing an order under this subsection, the Secretary*
12 *shall consult with the persons who are to give notice under*
13 *the order.*

14 “(b) *NO EXEMPTION FROM OTHER LIABILITY.—Com-*
15 *pliance with an order issued under this section shall not*
16 *relieve any person from liability under Federal or State*
17 *law. In awarding damages for economic loss in an action*
18 *brought for the enforcement of any such liability, the value*
19 *to the plaintiff in such action of any remedy provided under*
20 *such order shall be taken into account.*

21 “(c) *RECALL AUTHORITY.—*

22 “(1) *IN GENERAL.—If the Secretary finds that*
23 *there is a reasonable probability that a tobacco prod-*
24 *uct contains a manufacturing or other defect not ordi-*
25 *narily contained in tobacco products on the market*

1 *that would cause serious, adverse health consequences*
 2 *or death, the Secretary shall issue an order requiring*
 3 *the appropriate person (including the manufacturers,*
 4 *importers, distributors, or retailers of the tobacco*
 5 *product) to immediately cease distribution of such to-*
 6 *bacco product. The order shall provide the person sub-*
 7 *ject to the order with an opportunity for an informal*
 8 *hearing, to be held not later than 10 days after the*
 9 *date of the issuance of the order, on the actions re-*
 10 *quired by the order and on whether the order should*
 11 *be amended to require a recall of such tobacco prod-*
 12 *uct. If, after providing an opportunity for such a*
 13 *hearing, the Secretary determines that inadequate*
 14 *grounds exist to support the actions required by the*
 15 *order, the Secretary shall vacate the order.*

16 “(2) AMENDMENT OF ORDER TO REQUIRE RE-
 17 CALL.—

18 “(A) *If, after providing an opportunity for*
 19 *an informal hearing under paragraph (1), the*
 20 *Secretary determines that the order should be*
 21 *amended to include a recall of the tobacco prod-*
 22 *uct with respect to which the order was issued,*
 23 *the Secretary shall, except as provided in sub-*
 24 *paragraph (B), amend the order to require a re-*
 25 *call. The Secretary shall specify a timetable in*

1 *which the tobacco product recall will occur and*
 2 *shall require periodic reports to the Secretary de-*
 3 *scribing the progress of the recall.*

4 “(B) *An amended order under subpara-*
 5 *graph (A)—*

6 “(i) *shall not include recall of a to-*
 7 *bacco product from individuals; and*

8 “(ii) *shall provide for notice to persons*
 9 *subject to the risks associated with the use*
 10 *of such tobacco product.*

11 *In providing the notice required by clause (ii),*
 12 *the Secretary may use the assistance of retailers*
 13 *and other persons who distributed such tobacco*
 14 *product. If a significant number of such persons*
 15 *cannot be identified, the Secretary shall notify*
 16 *such persons under section 705(b).*

17 “(3) *REMEDY NOT EXCLUSIVE.—The remedy pro-*
 18 *vided by this subsection shall be in addition to rem-*
 19 *edies provided by subsection (a) of this section.*

20 **“SEC. 909. RECORDS AND REPORTS ON TOBACCO PROD-**
 21 **UCTS.**

22 “(a) *IN GENERAL.—Every person who is a tobacco*
 23 *product manufacturer or importer of a tobacco product*
 24 *shall establish and maintain such records, make such re-*
 25 *ports, and provide such information, as the Secretary may*

1 *by regulation reasonably require to assure that such tobacco*
2 *product is not adulterated or misbranded and to otherwise*
3 *protect public health. Regulations prescribed under the pre-*
4 *ceding sentence—*

5 “(1) *may require a tobacco product manufac-*
6 *turer or importer to report to the Secretary whenever*
7 *the manufacturer or importer receives or otherwise be-*
8 *comes aware of information that reasonably suggests*
9 *that one of its marketed tobacco products may have*
10 *caused or contributed to a serious unexpected adverse*
11 *experience associated with the use of the product or*
12 *any significant increase in the frequency of a serious,*
13 *expected adverse product experience;*

14 “(2) *shall require reporting of other significant*
15 *adverse tobacco product experiences as determined by*
16 *the Secretary to be necessary to be reported;*

17 “(3) *shall not impose requirements unduly bur-*
18 *densome to a tobacco product manufacturer or im-*
19 *porter, taking into account the cost of complying with*
20 *such requirements and the need for the protection of*
21 *the public health and the implementation of this*
22 *chapter;*

23 “(4) *when prescribing the procedure for making*
24 *requests for reports or information, shall require that*
25 *each request made under such regulations for submis-*

1 *sion of a report or information to the Secretary state*
 2 *the reason or purpose for such request and identify to*
 3 *the fullest extent practicable such report or informa-*
 4 *tion;*

5 *“(5) when requiring submission of a report or*
 6 *information to the Secretary, shall state the reason or*
 7 *purpose for the submission of such report or informa-*
 8 *tion and identify to the fullest extent practicable such*
 9 *report or information; and*

10 *“(6) may not require that the identity of any*
 11 *patient or user be disclosed in records, reports, or in-*
 12 *formation required under this subsection unless re-*
 13 *quired for the medical welfare of an individual, to de-*
 14 *termine risks to public health of a tobacco product, or*
 15 *to verify a record, report, or information submitted*
 16 *under this chapter.*

17 *In prescribing regulations under this subsection, the Sec-*
 18 *retary shall have due regard for the professional ethics of*
 19 *the medical profession and the interests of patients. The*
 20 *prohibitions of paragraph (6) of this subsection continue*
 21 *to apply to records, reports, and information concerning*
 22 *any individual who has been a patient, irrespective of*
 23 *whether or when he ceases to be a patient.*

24 *“(b) REPORTS OF REMOVALS AND CORRECTIONS.—*

1 (1) *Except as provided in paragraph (3), the*
 2 *Secretary shall by regulation require a tobacco prod-*
 3 *uct manufacturer or importer of a tobacco product to*
 4 *report promptly to the Secretary any corrective ac-*
 5 *tion taken or removal from the market of a tobacco*
 6 *product undertaken by such manufacturer or im-*
 7 *porter if the removal or correction was undertaken—*

8 *“(A) to reduce a risk to health posed by the*
 9 *tobacco product; or*

10 *“(B) to remedy a violation of this chapter*
 11 *caused by the tobacco product which may present*
 12 *a risk to health.*

13 *A tobacco product manufacturer or importer of a to-*
 14 *bacco product who undertakes a corrective action or*
 15 *removal from the market of a tobacco product which*
 16 *is not required to be reported under this subsection*
 17 *shall keep a record of such correction or removal.*

18 *“(2) No report of the corrective action or removal*
 19 *of a tobacco product may be required under para-*
 20 *graph (1) if a report of the corrective action or re-*
 21 *moval is required and has been submitted under sub-*
 22 *section (a) of this section.*

23 **“SEC. 910. PREMARKET REVIEW OF CERTAIN TOBACCO**
 24 **PRODUCTS.**

25 *“(a) IN GENERAL.—*

1 “(1) *PREMARKET APPROVAL REQUIRED.*—

2 “(A) *NEW PRODUCTS.*—Approval under this
 3 section of an application for premarket approval
 4 for any tobacco product that is not commercially
 5 marketed (other than for test marketing) in the
 6 United States as of August 11, 1995, is required
 7 unless the manufacturer has submitted a report
 8 under section 905(j), and the Secretary has
 9 issued an order that the tobacco product is sub-
 10 stantially equivalent to a tobacco product com-
 11 mercially marketed (other than for test market-
 12 ing) in the United States as of August 11, 1995,
 13 that is in compliance with the requirements of
 14 this Act.

15 “(B) *PRODUCTS INTRODUCED BETWEEN AU-*
 16 *GUST 11, 1995, AND ENACTMENT OF THIS CHAP-*
 17 *TER.*—Subparagraph (A) does not apply to a to-
 18 bacco product that—

19 “(i) *was first introduced or delivered*
 20 *for introduction into interstate commerce*
 21 *for commerce for commercial distribution in*
 22 *the United States after August 11, 1995,*
 23 *and before the date of enactment of the Na-*
 24 *tional Tobacco Policy and Youth Smoking*
 25 *Reduction Act; and*

1 “(ii) for which a report was submitted
2 under section 905(j) within 6 months after
3 such date,
4 until the Secretary issues an order that the to-
5 bacco product is substantially equivalent for pur-
6 poses of this section or requires premarket ap-
7 proval.

8 “(2) *SUBSTANTIALLY EQUIVALENT DEFINED.*—

9 “(A) For purposes of this section and sec-
10 tion 905(j), the term ‘substantially equivalent’ or
11 ‘substantial equivalence’ mean, with respect to
12 the tobacco product being compared to the predi-
13 cate tobacco product, that the Secretary by order
14 has found that the tobacco product—

15 “(i) has the same characteristics as the
16 predicate tobacco product; or

17 “(ii) has different characteristics and
18 the information submitted contains infor-
19 mation, including clinical data if deemed
20 necessary by the Secretary, that dem-
21 onstrates that it is not appropriate to regu-
22 late the product under this section because
23 the product does not raise different ques-
24 tions of public health.

1 “(B) For purposes of subparagraph (A), the
2 term ‘characteristics’ means the materials, ingre-
3 dients, design, composition, heating source, or
4 other features of a tobacco product.

5 “(C) A tobacco product may not be found to
6 be substantially equivalent to a predicate tobacco
7 product that has been removed from the market
8 at the initiative of the Secretary or that has been
9 determined by a judicial order to be misbranded
10 or adulterated.

11 “(3) HEALTH INFORMATION.—

12 “(A) As part of a submission under section
13 905(j) respecting a tobacco product, the person
14 required to file a premarket notification under
15 such section shall provide an adequate summary
16 of any health information related to the tobacco
17 product or state that such information will be
18 made available upon request by any person.

19 “(B) Any summary under subparagraph
20 (A) respecting a tobacco product shall contain
21 detailed information regarding data concerning
22 adverse health effects and shall be made available
23 to the public by the Secretary within 30 days of
24 the issuance of a determination that such tobacco

1 *product is substantially equivalent to another to-*
2 *bacco product.*

3 “(b) *APPLICATION.*—

4 “(1) *CONTENTS.*—*An application for premarket*
5 *approval shall contain—*

6 “(A) *full reports of all information, pub-*
7 *lished or known to or which should reasonably be*
8 *known to the applicant, concerning investiga-*
9 *tions which have been made to show the health*
10 *risks of such tobacco product and whether such*
11 *tobacco product presents less risk than other to-*
12 *bacco products;*

13 “(B) *a full statement of the components, in-*
14 *gredients, and properties, and of the principle or*
15 *principles of operation, of such tobacco product;*

16 “(C) *a full description of the methods used*
17 *in, and the facilities and controls used for, the*
18 *manufacture, processing, and, when relevant,*
19 *packing and installation of, such tobacco prod-*
20 *uct;*

21 “(D) *an identifying reference to any per-*
22 *formance standard under section 907 which*
23 *would be applicable to any aspect of such tobacco*
24 *product, and either adequate information to*
25 *show that such aspect of such tobacco product*

1 *fully meets such performance standard or ade-*
 2 *quate information to justify any deviation from*
 3 *such standard;*

4 “(E) such samples of such tobacco product
 5 *and of components thereof as the Secretary may*
 6 *reasonably require;*

7 “(F) specimens of the labeling proposed to
 8 *be used for such tobacco product; and*

9 “(G) such other information relevant to the
 10 *subject matter of the application as the Secretary*
 11 *may require.*

12 “(2) *REFERENCE TO ADVISORY COMMITTEE.—*
 13 *Upon receipt of an application meeting the require-*
 14 *ments set forth in paragraph (1), the Secretary—*

15 “(A) *may, on the Secretary’s own initiative;*

16 *or*

17 “(B) *shall, upon the request of an appli-*
 18 *cant,*

19 *refer such application to the Tobacco Products Sci-*
 20 *entific Advisory Committee established under section*
 21 *915 and for submission (within such period as the*
 22 *Secretary may establish) of a report and rec-*
 23 *ommendation respecting approval of the application,*
 24 *together with all underlying data and the reasons or*
 25 *basis for the recommendation.*

1 “(c) *ACTION ON APPLICATION.*—

2 “(1) *DEADLINE.*—

3 “(A) *As promptly as possible, but in no*
4 *event later than 180 days after the receipt of an*
5 *application under subsection (b) of this section,*
6 *the Secretary, after considering the report and*
7 *recommendation submitted under paragraph (2)*
8 *of such subsection, shall—*

9 “(i) *issue an order approving the ap-*
10 *plication if the Secretary finds that none of*
11 *the grounds for denying approval specified*
12 *in paragraph (2) of this subsection applies;*
13 *or*

14 “(ii) *deny approval of the application*
15 *if the Secretary finds (and sets forth the*
16 *basis for such finding as part of or accom-*
17 *panying such denial) that one or more*
18 *grounds for denial specified in paragraph*
19 *(2) of this subsection apply.*

20 “(B) *An order approving an application for*
21 *a tobacco product may require as a condition to*
22 *such approval that the sale and distribution of*
23 *the tobacco product be restricted but only to the*
24 *extent that the sale and distribution of a tobacco*

1 *product may be restricted under a regulation*
2 *under section 906(d).*

3 “(2) *DENIAL OF APPROVAL.—The Secretary shall*
4 *deny approval of an application for a tobacco product*
5 *if, upon the basis of the information submitted to the*
6 *Secretary as part of the application and any other*
7 *information before the Secretary with respect to such*
8 *tobacco product, the Secretary finds that—*

9 “(A) *there is a lack of a showing that per-*
10 *mitting such tobacco product to be marketed*
11 *would be appropriate for the protection of the*
12 *public health;*

13 “(B) *the methods used in, or the facilities or*
14 *controls used for, the manufacture, processing, or*
15 *packing of such tobacco product do not conform*
16 *to the requirements of section 906(e);*

17 “(C) *based on a fair evaluation of all mate-*
18 *rial facts, the proposed labeling is false or mis-*
19 *leading in any particular; or*

20 “(D) *such tobacco product is not shown to*
21 *conform in all respects to a performance stand-*
22 *ard in effect under section 907, compliance with*
23 *which is a condition to approval of the applica-*
24 *tion, and there is a lack of adequate information*
25 *to justify the deviation from such standard.*

1 “(3) *DENIAL INFORMATION.*—Any denial of an
2 application shall, insofar as the Secretary determines
3 to be practicable, be accompanied by a statement in-
4 forming the applicant of the measures required to
5 place such application in approvable form (which
6 measures may include further research by the appli-
7 cant in accordance with one or more protocols pre-
8 scribed by the Secretary).

9 “(4) *BASIS FOR FINDING.*—For purposes of this
10 section, the finding as to whether approval of a to-
11 bacco product is appropriate for the protection of the
12 public health shall be determined with respect to the
13 risks and benefits to the population as a whole, in-
14 cluding users and non-users of the tobacco product,
15 and taking into account—

16 “(A) the increased or decreased likelihood
17 that existing users of tobacco products will stop
18 using such products; and

19 “(B) the increased or decreased likelihood
20 that those who do not use tobacco products will
21 start using such products.

22 “(5) *BASIS FOR ACTION.*—

23 “(A) For purposes of paragraph (2)(A),
24 whether permitting a tobacco product to be mar-
25 keted would be appropriate for the protection of

1 *the public health shall, when appropriate, be de-*
 2 *termined on the basis of well-controlled inves-*
 3 *tigations, which may include one or more clini-*
 4 *cal investigations by experts qualified by train-*
 5 *ing and experience to evaluate the tobacco prod-*
 6 *uct.*

7 *“(B) If the Secretary determines that there*
 8 *exists valid scientific evidence (other than evi-*
 9 *dence derived from investigations described in*
 10 *subparagraph (A)) which is sufficient to evaluate*
 11 *the tobacco product the Secretary may authorize*
 12 *that the determination for purposes of paragraph*
 13 *(2)(A) be made on the basis of such evidence.*

14 *“(d) WITHDRAWAL AND TEMPORARY SUSPENSION.—*

15 *“(1) IN GENERAL.—The Secretary shall, upon*
 16 *obtaining, where appropriate, advice on scientific*
 17 *matters from the Tobacco Products Scientific Advi-*
 18 *sory Committee established under section 915, and*
 19 *after due notice and opportunity for informal hearing*
 20 *to the holder of an approved application for a tobacco*
 21 *product, issue an order withdrawing approval of the*
 22 *application if the Secretary finds—*

23 *“(A) that the continued marketing of such*
 24 *tobacco product no longer is appropriate for the*
 25 *protection of the public health;*

1 “(B) that the application contained or was
2 accompanied by an untrue statement of a mate-
3 rial fact;

4 “(C) that the applicant—

5 “(i) has failed to establish a system for
6 maintaining records, or has repeatedly or
7 deliberately failed to maintain records or to
8 make reports, required by an applicable reg-
9 ulation under section 909;

10 “(ii) has refused to permit access to, or
11 copying or verification of, such records as
12 required by section 704; or

13 “(iii) has not complied with the re-
14 quirements of section 905;

15 “(D) on the basis of new information before
16 the Secretary with respect to such tobacco prod-
17 uct, evaluated together with the evidence before
18 the Secretary when the application was ap-
19 proved, that the methods used in, or the facilities
20 and controls used for, the manufacture, process-
21 ing, packing, or installation of such tobacco
22 product do not conform with the requirements of
23 section 906(e) and were not brought into con-
24 formity with such requirements within a reason-

1 *able time after receipt of written notice from the*
2 *Secretary of nonconformity;*

3 *“(E) on the basis of new information before*
4 *the Secretary, evaluated together with the evi-*
5 *dence before the Secretary when the application*
6 *was approved, that the labeling of such tobacco*
7 *product, based on a fair evaluation of all mate-*
8 *rial facts, is false or misleading in any particu-*
9 *lar and was not corrected within a reasonable*
10 *time after receipt of written notice from the Sec-*
11 *retary of such fact; or*

12 *“(F) on the basis of new information before*
13 *the Secretary, evaluated together with the evi-*
14 *dence before the Secretary when the application*
15 *was approved, that such tobacco product is not*
16 *shown to conform in all respects to a perform-*
17 *ance standard which is in effect under section*
18 *907, compliance with which was a condition to*
19 *approval of the application, and that there is a*
20 *lack of adequate information to justify the devi-*
21 *ation from such standard.*

22 *“(2) APPEAL.—The holder of an application sub-*
23 *ject to an order issued under paragraph (1) with-*
24 *drawing approval of the application may, by petition*
25 *filed on or before the thirtieth day after the date upon*

1 *which he receives notice of such withdrawal, obtain*
 2 *review thereof in accordance with subsection (e) of*
 3 *this section.*

4 “(3) *TEMPORARY SUSPENSION.*—If, after provid-
 5 *ing an opportunity for an informal hearing, the Sec-*
 6 *retary determines there is reasonable probability that*
 7 *the continuation of distribution of a tobacco product*
 8 *under an approved application would cause serious,*
 9 *adverse health consequences or death, that is greater*
 10 *than ordinarily caused by tobacco products on the*
 11 *market, the Secretary shall by order temporarily sus-*
 12 *pend the approval of the application approved under*
 13 *this section. If the Secretary issues such an order, the*
 14 *Secretary shall proceed expeditiously under para-*
 15 *graph (1) to withdraw such application.*

16 “(e) *SERVICE OF ORDER.*—An order issued by the Sec-
 17 *retary under this section shall be served—*

18 “(1) *in person by any officer or employee of the*
 19 *department designated by the Secretary; or*

20 “(2) *by mailing the order by registered mail or*
 21 *certified mail addressed to the applicant at the appli-*
 22 *cant’s last known address in the records of the Sec-*
 23 *retary.*

24 **“SEC. 911. JUDICIAL REVIEW.**

25 “(a) *IN GENERAL.*—Not later than 30 days after—

1 “(1) the promulgation of a regulation under sec-
2 tion 907 establishing, amending, or revoking a per-
3 formance standard for a tobacco product; or

4 “(2) a denial of an application for approval
5 under section 910(c),

6 any person adversely affected by such regulation or order
7 may file a petition with the United States Court of Appeals
8 for the District of Columbia or for the circuit wherein such
9 person resides or has his principal place of business for ju-
10 dicial review of such regulation or order. A copy of the peti-
11 tion shall be transmitted by the clerk of the court to the
12 Secretary or other officer designated by the Secretary for
13 that purpose. The Secretary shall file in the court the record
14 of the proceedings on which the Secretary based the Sec-
15 retary’s regulation or order and each record or order shall
16 contain a statement of the reasons for its issuance and the
17 basis, on the record, for its issuance. For purposes of this
18 section, the term ‘record’ means all notices and other matter
19 published in the *Federal Register* with respect to the regula-
20 tion or order reviewed, all information submitted to the Sec-
21 retary with respect to such regulation or order, proceedings
22 of any panel or advisory committee with respect to such
23 regulation or order, any hearing held with respect to such
24 regulation or order, and any other information identified
25 by the Secretary, in the administrative proceeding held

1 *with respect to such regulation or order, as being relevant*
2 *to such regulation or order.*

3 “(b) *COURT MAY ORDER THE SECRETARY TO MAKE*
4 *ADDITIONAL FINDINGS.—If the petitioner applies to the*
5 *court for leave to adduce additional data, views, or argu-*
6 *ments respecting the regulation or order being reviewed and*
7 *shows to the satisfaction of the court that such additional*
8 *data, views, or arguments are material and that there were*
9 *reasonable grounds for the petitioner’s failure to adduce*
10 *such data, views, or arguments in the proceedings before*
11 *the Secretary, the court may order the Secretary to provide*
12 *additional opportunity for the oral presentation of data,*
13 *views, or arguments and for written submissions. The Sec-*
14 *retary may modify the Secretary’s findings, or make new*
15 *findings by reason of the additional data, views, or argu-*
16 *ments so taken and shall file with the court such modified*
17 *or new findings, and the Secretary’s recommendation, if*
18 *any, for the modification or setting aside of the regulation*
19 *or order being reviewed, with the return of such additional*
20 *data, views, or arguments.*

21 “(c) *STANDARD OF REVIEW.—Upon the filing of the*
22 *petition under subsection (a) of this section for judicial re-*
23 *view of a regulation or order, the court shall have jurisdic-*
24 *tion to review the regulation or order in accordance with*
25 *chapter 7 of title 5, United States Code, and to grant appro-*

1 *priate relief, including interim relief, as provided in such*
 2 *chapter. A regulation or order described in paragraph (1)*
 3 *or (2) of subsection (a) of this section shall not be affirmed*
 4 *if it is found to be unsupported by substantial evidence on*
 5 *the record taken as a whole.*

6 “(d) *FINALITY OF JUDGMENT.*—*The judgment of the*
 7 *court affirming or setting aside, in whole or in part, any*
 8 *regulation or order shall be final, subject to review by the*
 9 *Supreme Court of the United States upon certiorari or cer-*
 10 *tification, as provided in section 1254 of title 28, United*
 11 *States Code.*

12 “(e) *OTHER REMEDIES.*—*The remedies provided for in*
 13 *this section shall be in addition to and not in lieu of any*
 14 *other remedies provided by law.*

15 “(f) *REGULATIONS AND ORDERS MUST RECITE BASIS*
 16 *IN RECORD.*—*To facilitate judicial review under this sec-*
 17 *tion or under any other provision of law of a regulation*
 18 *or order issued under section 906, 907, 908, 909, 910, or*
 19 *914, each such regulation or order shall contain a statement*
 20 *of the reasons for its issuance and the basis, in the record*
 21 *of the proceedings held in connection with its issuance, for*
 22 *its issuance.*

23 **“SEC. 912. POSTMARKET SURVEILLANCE.**

24 “(a) *DISCRETIONARY SURVEILLANCE.*—*The Secretary*
 25 *may require a tobacco product manufacturer to conduct*

1 *postmarket surveillance for a tobacco product of the manu-*
 2 *facturer if the Secretary determines that postmarket surveil-*
 3 *lance of the tobacco product is necessary to protect the pub-*
 4 *lic health or is necessary to provide information regarding*
 5 *the health risks and other safety issues involving the tobacco*
 6 *product.*

7 “(b) *SURVEILLANCE APPROVAL.*—*Each tobacco prod-*
 8 *uct manufacturer required to conduct a surveillance of a*
 9 *tobacco product under subsection (a) of this section shall,*
 10 *within 30 days after receiving notice that the manufacturer*
 11 *is required to conduct such surveillance, submit, for the ap-*
 12 *proval of the Secretary, a protocol for the required surveil-*
 13 *lance. The Secretary, within 60 days of the receipt of such*
 14 *protocol, shall determine if the principal investigator pro-*
 15 *posed to be used in the surveillance has sufficient qualifica-*
 16 *tions and experience to conduct such surveillance and if*
 17 *such protocol will result in collection of useful data or other*
 18 *information necessary to protect the public health. The Sec-*
 19 *retary may not approve such a protocol until it has been*
 20 *reviewed by an appropriately qualified scientific and tech-*
 21 *nical review committee established by the Secretary.*

22 **“SEC. 913. REDUCED RISK TOBACCO PRODUCTS.**

23 “(a) *REQUIREMENTS.*—

24 “(1) *IN GENERAL.*—*For purposes of this section,*
 25 *the term ‘reduced risk tobacco product’ means a to-*

1 *bacco product designated by the Secretary under*
2 *paragraph (2).*

3 “(2) *DESIGNATION.*—

4 “(A) *IN GENERAL.*—A product may be des-
5 *ignated by the Secretary as a reduced risk to-*
6 *bacco product if the Secretary finds that the*
7 *product will significantly reduce harm to indi-*
8 *viduals caused by a tobacco product and is oth-*
9 *erwise appropriate to protect public health, based*
10 *on an application submitted by the manufac-*
11 *turer of the product (or other responsible person)*
12 *that—*

13 “(i) *demonstrates through testing on*
14 *animals and short-term human testing that*
15 *use of such product results in ingestion or*
16 *inhalation of a substantially lower yield of*
17 *toxic substances than use of conventional to-*
18 *bacco products in the same category as the*
19 *proposed reduced risk product; and*

20 “(ii) *if required by the Secretary, in-*
21 *cludes studies of the long-term health effects*
22 *of the product.*

23 *If such studies are required, the manufacturer*
24 *may consult with the Secretary regarding proto-*
25 *cols for conducting the studies.*

1 “(B) *BASIS FOR FINDING.*—*In making the*
2 *finding under subparagraph (A), the Secretary*
3 *shall take into account—*

4 “(i) *the risks and benefits to the popu-*
5 *lation as a whole, including both users of*
6 *tobacco products and non-users of tobacco*
7 *products;*

8 “(ii) *the increased or decreased likeli-*
9 *hood that existing users of tobacco products*
10 *will stop using such products including re-*
11 *duced risk tobacco products;*

12 “(iii) *the increased or decreased likeli-*
13 *hood that those who do not use tobacco*
14 *products will start to use such products, in-*
15 *cluding reduced risk tobacco products; and*

16 “(iii) *the risks and benefits to consum-*
17 *ers from the use of a reduced risk tobacco*
18 *product as compared to the use of products*
19 *approved under chapter V to reduce expo-*
20 *sure to tobacco.*

21 “(3) *MARKETING REQUIREMENTS.*—*A tobacco*
22 *product may be marketed and labeled as a reduced*
23 *risk tobacco product if it—*

1 “(A) has been designated as a reduced risk
2 tobacco product by the Secretary under para-
3 graph (2);

4 “(B) bears a label prescribed by the Sec-
5 retary concerning the product’s contribution to
6 reducing harm to health; and

7 “(C) complies with requirements prescribed
8 by the Secretary relating to marketing and ad-
9 vertising of the product, and other provisions of
10 this chapter as prescribed by the Secretary.

11 “(b) *REVOCATION OF DESIGNATION.*—At any time
12 after the date on which a tobacco product is designated as
13 a reduced risk tobacco product under this section the Sec-
14 retary may, after providing an opportunity for an informal
15 hearing, revoke such designation if the Secretary deter-
16 mines, based on information not available at the time of
17 the designation, that—

18 “(1) the finding made under subsection (a)(2) is
19 no longer valid; or

20 “(2) the product is being marketed in violation
21 of subsection (a)(3).

22 “(c) *LIMITATION.*—A tobacco product that is des-
23 ignated as a reduced risk tobacco product that is in compli-
24 ance with subsection (a) shall not be regulated as a drug
25 or device.

1 “(d) *DEVELOPMENT OF REDUCED RISK TOBACCO*
 2 *PRODUCT TECHNOLOGY.*—A tobacco product manufacturer
 3 shall provide written notice to the Secretary upon the devel-
 4 opment or acquisition by the manufacturer of any tech-
 5 nology that would reduce the risk of a tobacco product to
 6 the health of the user for which the manufacturer is not
 7 seeking designation as a ‘reduced risk tobacco product’
 8 under subsection (a).

9 **“SEC. 914. PRESERVATION OF STATE AND LOCAL AUTHOR-**
 10 **ITY.**

11 “(a) *ADDITIONAL REQUIREMENTS.*—

12 “(1) *IN GENERAL.*—Except as provided in para-
 13 graph (2), nothing in this Act shall be construed as
 14 prohibiting a State or political subdivision thereof
 15 from adopting or enforcing a requirement applicable
 16 to a tobacco product that is in addition to, or more
 17 stringent than, requirements established under this
 18 chapter.

19 “(2) *PREEMPTION OF CERTAIN STATE AND LOCAL*
 20 *REQUIREMENTS.*—

21 “(A) Except as provided in subparagraph
 22 (B), no State or political subdivision of a State
 23 may establish or continue in effect with respect
 24 to a tobacco product any requirement which is
 25 different from, or in addition to, any require-

1 *ment applicable under the provisions of this*
 2 *chapter relating to performance standards, pre-*
 3 *market approval, adulteration, misbranding,*
 4 *registration, reporting, good manufacturing*
 5 *standards, or reduced risk products.*

6 “(B) Subparagraph (A) does not apply to
 7 requirements relating to the sale, use, or dis-
 8 tribution of a tobacco product including require-
 9 ments related to the access to, and the advertis-
 10 ing and promotion of, a tobacco product.

11 “(b) *RULE OF CONSTRUCTION REGARDING PRODUCT*
 12 *LIABILITY.*—No provision of this chapter relating to a to-
 13 bacco product shall be construed to modify or otherwise af-
 14 fect any action or the liability of any person under the
 15 product liability law of any State.

16 “(c) *WAIVERS.*—Upon the application of a State or
 17 political subdivision thereof, the Secretary may, by regula-
 18 tion promulgated after notice and an opportunity for an
 19 oral hearing, exempt from subsection (a), under such condi-
 20 tions as may be prescribed in such regulation, a require-
 21 ment of such State or political subdivision applicable to a
 22 tobacco product if—

23 “(1) the requirement is more stringent than a re-
 24 quirement applicable under the provisions described
 25 in subsection (a)(3) which would be applicable to the

1 tobacco product if an exemption were not in effect
 2 under this subsection; or

3 “(2) the requirement—

4 “(A) is required by compelling local condi-
 5 tions; and

6 “(B) compliance with the requirement
 7 would not cause the tobacco product to be in vio-
 8 lation of any applicable requirement of this
 9 chapter.

10 **“SEC. 915. TOBACCO PRODUCTS SCIENTIFIC ADVISORY**
 11 **COMMITTEE.**

12 “(a) *ESTABLISHMENT.*—Not later than 1 year after the
 13 date of enactment of the National Tobacco Policy and Youth
 14 Smoking Reduction Act, the Secretary shall establish a 9-
 15 member advisory committee, to be known as the ‘Tobacco
 16 Products Scientific Advisory Committee’.

17 “(b) *MEMBERSHIP.*—

18 “(1) *IN GENERAL.*—The Secretary shall appoint
 19 as members of the Tobacco Products Scientific Advi-
 20 sory Committee individuals who are technically
 21 qualified by training and experience in the medicine,
 22 medical ethics, science, or technology involving the
 23 manufacture, evaluation, or use of tobacco products,
 24 who are of appropriately diversified professional
 25 backgrounds. The committee shall be composed of—

1 “(A) 3 individuals who are officers or em-
 2 ployees of a State or local government, or of the
 3 Federal government;

4 “(B) 2 individuals as representatives of in-
 5 terests of the tobacco manufacturing industry;

6 “(C) 2 individuals as representatives of in-
 7 terests of physicians and other healthcare profes-
 8 sionals; and

9 “(D) 2 individuals as representatives of the
 10 general public.

11 “(2) *LIMITATION.*—The Secretary may not ap-
 12 point to the Advisory Committee any individual who
 13 is in the regular full-time employ of the Food and
 14 Drug Administration or any agency responsible for
 15 the enforcement of this Act. The Secretary may ap-
 16 point Federal officials as *ex-officio* members.

17 “(3) *CHAIRPERSON.*—The Secretary shall des-
 18 ignate 1 of the members of the Advisory Committee to
 19 serve as chairperson.

20 “(c) *DUTIES.*—The Tobacco Products Scientific Advi-
 21 sory Committee shall provide advice, information, and rec-
 22 ommendations to the Secretary—

23 “(1) as provided in this chapter;

24 “(2) on the effects of the alteration of the nicotine
 25 yields from tobacco products;

1 “(3) on whether there is a threshold level below
2 which nicotine yields do not produce dependence on
3 the tobacco product involved; and

4 “(4) on its review of other safety, dependence, or
5 health issues relating to tobacco products as requested
6 by the Secretary.

7 “(d) COMPENSATION; SUPPORT; FACA.—

8 “(1) COMPENSATION AND TRAVEL.—Members of
9 the Advisory Committee who are not officers or em-
10 ployees of the United States, while attending con-
11 ferences or meetings of the committee or otherwise en-
12 gaged in its business, shall be entitled to receive com-
13 pensation at rates to be fixed by the Secretary, which
14 may not exceed the daily equivalent of the rate in ef-
15 fect for level 4 of the Senior Executive Schedule under
16 section 5382 of title 5, United States Code, for each
17 day (including travel time) they are so engaged; and
18 while so serving away from their homes or regular
19 places of business each member may be allowed travel
20 expenses, including per diem in lieu of subsistence, as
21 authorized by section 5703 of title 5, United States
22 Code, for persons in the Government service employed
23 intermittently.

1 “(2) *ADMINISTRATIVE SUPPORT.*—*The Secretary*
 2 *shall furnish the Advisory Committee clerical and*
 3 *other assistance.*

4 “(3) *NONAPPLICATION OF FACA.*—*Section 14 of*
 5 *the Federal Advisory Committee Act (5 U.S.C.*
 6 *App.) does not apply to the Advisory Committee.*

7 “(e) *PROCEEDINGS OF ADVISORY PANELS AND COM-*
 8 *MITTEES.*—*The Advisory Committee shall make and main-*
 9 *tain a transcript of any proceeding of the panel or commit-*
 10 *tee. Each such panel and committee shall delete from any*
 11 *transcript made under this subsection information which*
 12 *is exempt from disclosure under section 552(b) of title 5,*
 13 *United States Code.*

14 **“SEC. 916. EQUAL TREATMENT OF RETAIL OUTLETS.**

15 *—“The Secretary shall issue regulations to require that*
 16 *retail establishments for which the predominant business is*
 17 *the sale of tobacco products comply with any advertising*
 18 *restrictions applicable to retail establishments accessible to*
 19 *individuals under the age of 18.”.*

20 **SEC. 102. CONFORMING AND OTHER AMENDMENTS TO GEN-**
 21 **ERAL PROVISIONS.**

22 “(a) *AMENDMENT OF FEDERAL FOOD, DRUG, AND COS-*
 23 *METIC ACT.*—*Except as otherwise expressly provided, when-*
 24 *ever in this section an amendment is expressed in terms*
 25 *of an amendment to, or repeal of, a section or other provi-*

1 sion, the reference is to a section or other provision of the
 2 Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et
 3 seq.).

4 (b) *SECTION 301.*—Section 301 (21 U.S.C. 331) is
 5 amended—

6 (1) by inserting “tobacco product,” in subsection
 7 (a) after “device,”;

8 (2) by inserting “tobacco product,” in subsection
 9 (b) after “device,”;

10 (3) by inserting “tobacco product,” in subsection
 11 (c) after “device,”;

12 (4) by striking “515(f), or 519” in subsection (e)
 13 and inserting “515(f), 519, or 909”;

14 (5) by inserting “tobacco product,” in subsection
 15 (g) after “device,”;

16 (6) by inserting “tobacco product,” in subsection
 17 (h) after “device,”;

18 (7) by striking “708, or 721” in subsection (j)
 19 and inserting “708, 721, 904, 905, 906, 907, 908, or
 20 909”;

21 (8) by inserting “tobacco product,” in subsection
 22 (k) after “device,”;

23 (9) by striking subsection (p) and inserting the
 24 following:

1 “(p) *The failure to register in accordance with section*
 2 *510 or 905, the failure to provide any information required*
 3 *by section 510(j), 510(k), 905(i), or 905(j), or the failure*
 4 *to provide a notice required by section 510(j)(2) or*
 5 *905(J)(2).”;*

6 (10) *by striking subsection (q)(1) and inserting*
 7 *the following:*

8 “(q)(1) *The failure or refusal—*

9 “(A) *to comply with any requirement prescribed*
 10 *under section 518, 520(g), 906(f), or 908;*

11 “(B) *to furnish any notification or other mate-*
 12 *rial or information required by or under section 519,*
 13 *520(g), 904, 906(f), or 909; or*

14 “(C) *to comply with a requirement under section*
 15 *522 or 912.”;*

16 (11) *by striking “device,” in subsection (q)(2)*
 17 *and inserting “device or tobacco product,”; and*

18 (12) *by inserting “or tobacco product” in sub-*
 19 *section (r) after “device” each time that it appears.*

20 (c) *SECTION 303.—Section 303(f)(1)(A) (21 U.S.C.*
 21 *333(f)(1)(A)) is amended by inserting “or tobacco products”*
 22 *after “devices”.*

23 (d) *SECTION 304.—Section 304 (21 U.S.C. 334) is*
 24 *amended—*

1 (1) by striking “and” before “(D)” in subsection
2 (a)(2);

3 (2) by striking “device.” in subsection (a)(2) and
4 inserting a comma and “(E) Any adulterated or mis-
5 branded tobacco product.”;

6 (3) by inserting “tobacco product,” in subsection
7 (d)(1) after “device,”;

8 (4) by inserting “or tobacco product” in sub-
9 section (g)(1) after “device” each place it appears;
10 and

11 (5) by inserting “or tobacco product” in sub-
12 section (g)(2)(A) after “device” each place it appears.

13 (e) SECTION 702.—Section 702(a) (21 U.S.C. 372(a))
14 is amended—

15 (1) by inserting “(1)” after “(a)”; and

16 (2) by adding at the end thereof the following:

17 “(2) For a tobacco product, to the extent feasible, the
18 Secretary shall contract with the States in accordance with
19 paragraph (1) to carry out inspections of retailers in con-
20 nection with the enforcement of this Act.”.

21 (f) SECTION 703.—Section 703 (21 U.S.C. 373) is
22 amended—

23 (1) by inserting “tobacco product,” after “de-
24 vice,” each place it appears; and

1 (2) by inserting “tobacco products,” after “de-
2 vices,” each place it appears.

3 (g) SECTION 704.—Section 704 (21 U.S.C. 374) is
4 amended—

5 (1) by inserting “tobacco products,” in sub-
6 section (a)(1)(A) after “devices,” each place it ap-
7 pears;

8 (2) by inserting “or tobacco products” in sub-
9 section (a)(1)(B) after “restricted devices” each place
10 it appears; and

11 (3) by inserting “tobacco product,” in subsection
12 (b) after “device,”.

13 (h) SECTION 705.—Section 705(b) (21 U.S.C. 375(b))
14 is amended by inserting “tobacco products,” after “de-
15 vices,”.

16 (i) SECTION 709.—Section 709 (21 U.S. C. 379) is
17 amended by inserting “or tobacco product” after “device”.

18 (j) SECTION 801.—Section 801 (21 U.S.C. 381) is
19 amended—

20 (1) by inserting “tobacco products,” after “de-
21 vices,” in subsection (a) the first time it appears;

22 (2) by inserting “or subsection (j) of section 905”
23 in subsection (a) after “section 510”; and

1 (3) *by striking “drugs or devices” each time it*
 2 *appears in subsection (a) and inserting “drugs, de-*
 3 *vices, or tobacco products”;*

4 (4) *by inserting “tobacco product,” in subsection*
 5 *(e)(1) after “device,”;*

6 (2) *by redesignating paragraph (4) of subsection*
 7 *(e) as paragraph (5) and inserting after paragraph*
 8 *(3), the following:*

9 *“(4) Paragraph (1) does not apply to any to-*
 10 *bacco product—*

11 *“(A) which does not comply with an appli-*
 12 *cable requirement of section 907 or 910; or*

13 *“(B) which under section 906(f) is exempt*
 14 *from either such section.*

15 *This paragraph does not apply if the Secretary has*
 16 *determined that the exportation of the tobacco product*
 17 *is not contrary to the public health and safety and*
 18 *has the approval of the country to which it is in-*
 19 *tended for export or the tobacco product is eligible for*
 20 *export under section 802.”.*

21 (k) *SECTION 802.—Section 802 (21 U.S.C. 382) is*
 22 *amended—*

23 (1) *by striking “device—” in subsection (a) and*
 24 *inserting “device or tobacco product—”;*

1 (2) by striking “and” after the semicolon in sub-
2 section (a)(1)(C);

3 (3) by striking subparagraph (C) of subsection
4 (a)(2) and all that follows in that subsection and in-
5 serting the following:

6 “(C) is a banned device under section 516;

7 or

8 “(3) which, in the case of a tobacco product—

9 “(A) does not comply with an applicable re-
10 quirement of section 907 or 910; or

11 “(B) under section 906(f) is exempt from ei-
12 ther such section,

13 is adulterated, misbranded, and in violation of such
14 sections or Act unless the export of the drug, device,
15 or tobacco product is, except as provided in subsection
16 (f), authorized under subsection (b), (c), (d), or (e) of
17 this section or section 801(e)(2) or 801(e)(4). If a
18 drug, device, or tobacco product described in para-
19 graph (1), (2), or (3) may be exported under sub-
20 section (b) and if an application for such drug or de-
21 vice under section 505, 515, or 910 of this Act or sec-
22 tion 351 of the Public Health Service Act (42 U.S.C.
23 262) was disapproved, the Secretary shall notify the
24 appropriate public health official of the country to

1 *which such drug, device, or tobacco product will be ex-*
 2 *ported of such disapproval.”;*

3 (4) *by inserting “or tobacco product” in sub-*
 4 *section (b)(1)(A) after “device” each time it appears;*

5 (5) *by inserting “or tobacco product” in sub-*
 6 *section (c) after “device” and inserting “or section*
 7 *906(f)” after “520(g).”;*

8 (6) *by inserting “or tobacco product” in sub-*
 9 *section (f) after “device” each time it appears; and*

10 (7) *by inserting “or tobacco product” in sub-*
 11 *section (g) after “device” each time it appears.*

12 (l) *SECTION 1003.—Section 1003(d)(2)(C) (as redesign-*
 13 *ated by section 101(a)) is amended—*

14 (1) *by striking “and” after “cosmetics,”; and*

15 (2) *inserting a comma and “and tobacco prod-*
 16 *ucts” after “devices”.*

17 ***Subtitle B—Advertising***

18 ***SEC. 121. ADVERTISING PROVISIONS IN PROTOCOL.***

19 *The Protocol shall contain provisions enforceable at*
 20 *law under which tobacco product manufacturers commit to*
 21 *observe limitations on advertising that meet the require-*
 22 *ments set forth in this subtitle.*

1 **SEC. 122. TOBACCO PRODUCT LABELING AND ADVERTIS-**
2 **ING.**

3 (a) *IN GENERAL.*—*The Protocol shall require that no*
4 *tobacco product will be sold or distributed in the United*
5 *States—*

6 (1) *unless its advertising and labeling (including*
7 *the package)—*

8 (A) *contain no human image, animal*
9 *image, or cartoon character;*

10 (B) *are not outdoor advertising, including*
11 *advertising in enclosed stadia and advertising*
12 *from within a retail establishment that is di-*
13 *rected toward or visible from the outside of the*
14 *establishment;*

15 (C) *are accompanied by a disclaimer in the*
16 *advertising that words such as “light” or “low*
17 *tar” describing the product do not render the*
18 *product less hazardous than any other tobacco*
19 *product, in addition to such other requirements*
20 *as the Secretary may impose;*

21 (D) *at the time the advertising or labeling*
22 *is first used are submitted to the Secretary so*
23 *that the Secretary may conduct regular review of*
24 *the advertising and labeling;*

25 (E) *comply with any applicable require-*
26 *ment of the Federal Food, Drug, and Cosmetic*

1 *Act, the Federal Cigarette Labeling and Adver-*
2 *tising Act, and any regulation promulgated*
3 *under either of those Acts;*

4 *(F) do not appear on the international com-*
5 *puter network of both Federal and non-Federal*
6 *interoperable packet switches data networks (the*
7 *“Internet”), unless such advertising is designed*
8 *to be inaccessible in or from the United States*
9 *to all individuals under the age of 18 years;*

10 *(G) use only black text on white back-*
11 *ground, other than—*

12 *(i) those locations where self-service*
13 *displays are permitted under subsection*
14 *123, if the advertising is not visible from*
15 *outside the establishment and is affixed to a*
16 *wall or fixture in the establishment; and*

17 *(ii) advertisements appearing in any*
18 *publication which the tobacco product man-*
19 *ufacturer, distributor, or retailer dem-*
20 *onstrates to the Secretary is a newspaper,*
21 *magazine, periodical, or other publication*
22 *whose readers under the age of 18 years*
23 *constitute 15 percent or less of the total*
24 *readership as measured by competent and*
25 *reliable survey evidence, and that is read by*

1 *less than 2 million persons under the age*
2 *of 18 years as measured by competent and*
3 *reliable survey evidence;*

4 *(H) for video formats, use only static black*
5 *text on a white background, and any accom-*
6 *panying audio uses only words without music or*
7 *sound effects; and*

8 *(I) for audio formats, use only words with-*
9 *out music or sound effects;*

10 *(2) if a logo, symbol, motto, selling message, rec-*
11 *ognizable color or pattern of colors, or any other indi-*
12 *cia of product identification of the tobacco product is*
13 *contained in a movie, program, or video game for*
14 *which a direct or indirect payment has been made to*
15 *ensure its placement;*

16 *(3) if a direct or indirect payment has been*
17 *made by any tobacco product manufacturer, distribu-*
18 *tor, or retailer to any entity for the purpose of pro-*
19 *moting the image or use of the tobacco product*
20 *through print or film media that appeals to individ-*
21 *uals under the age of 18 years or through a live per-*
22 *formance by an entertainment artist that appeals to*
23 *such individuals;*

24 *(4) if a logo, symbol, motto, selling message, rec-*
25 *ognizable color or pattern of colors, or any other indi-*

1 *cia or product identification identical to, similar to,*
 2 *or identifiable with the tobacco product is used for*
 3 *any item (other than a tobacco product) or service*
 4 *marketed, licensed, distributed or sold or caused to be*
 5 *marketed, licensed, distributed, or sold by the tobacco*
 6 *product manufacturer or distributor of the tobacco*
 7 *product;*

8 *(5) unless its package label and advertising bear*
 9 *the product's established name and a statement of its*
 10 *intended use, as follows:*

11 *(A) "Cigarettes-A Nicotine Delivery De-*
 12 *vice";*

13 *(B) "Cigarette Tobacco-A Nicotine Delivery*
 14 *Device"; or*

15 *(C) "Loose Leaf Chewing Tobacco", "Plug*
 16 *Chewing Tobacco", "Twist Chewing Tobacco",*
 17 *"Moist Snuff", or "Dry Snuff", whichever is ap-*
 18 *propriate for the product, followed by "-A Nico-*
 19 *tine Delivery Device"; and*

20 *(6)(A) except as provided in subparagraph (B),*
 21 *if advertising or labeling for such product that is oth-*
 22 *erwise in accordance with the requirements of this*
 23 *section bears a tobacco product brand name (alone or*
 24 *in conjunction with any other word) or any other in-*
 25 *dicia of tobacco product identification and is dissemi-*

1 nated in a medium other than newspapers, maga-
 2 zines, periodicals or other publications (whether peri-
 3 odic or limited distribution), nonpoint-of-sale pro-
 4 motional material (including direct mail), point-of-
 5 sale promotional material, or audio or video formats
 6 delivered at a point-of-sale; but

7 (B) notwithstanding subparagraph (A), advertis-
 8 ing or labeling for cigarettes or smokeless tobacco may
 9 be disseminated in a medium that is not specified in
 10 paragraph (1) if the tobacco product manufacturer,
 11 distributor, or retailer notifies the Secretary not later
 12 than 30 days prior to the use of such medium, and
 13 the notice describes the medium and the extent to
 14 which the advertising or labeling may be seen by per-
 15 sons under the age of 18 years.

16 (b) *COLOR PRINT ADS ON MAGAZINES.*—The Protocol
 17 shall also provide that no tobacco product may be sold or
 18 distributed in the United States if any advertising for that
 19 product on the outside back cover of a magazine appears
 20 in any color or combination of colors.

21 **SEC. 123. POINT-OF-SALE RESTRICTIONS.**

22 (a) *IN GENERAL.*—Except as provided in subsection
 23 (b), the Protocol shall provide that no participating tobacco
 24 product manufacturer, distributor, or retailer shall engage
 25 in point-of-sale advertising of any tobacco product in any

1 *retail establishment (other than an establishment that sells*
 2 *only tobacco products) in which an individual under 18*
 3 *years of age is present, or permitted to enter, at any time.*

4 *(b) PERMITTED POS LOCATIONS.—*

5 *(1) PLACEMENT.—A retailer may place 1 point-*
 6 *of-sale advertisement in or at each retail establish-*
 7 *ment for its brand or the contracted house retailer or*
 8 *private label brand of its wholesaler.*

9 *(2) SIZE.—The display area of any such point-*
 10 *of-sale advertisement (either individually or in the*
 11 *aggregate) shall not be larger than 576 square inches*
 12 *and shall consist of black letters on white background*
 13 *or another recognized typography.*

14 *(3) PROXIMITY TO CANDY.—Any such point-of-*
 15 *sale advertisement shall not be attached to or located*
 16 *within 2 feet of any display fixture on which candy*
 17 *is displayed for sale.*

18 *(c) AUDIO OR VIDEO.—Any audio or video format per-*
 19 *mitted under regulations promulgated by the Secretary may*
 20 *be distributed at the time of sale of a tobacco product to*
 21 *individuals over the age of 18 years, but no such format*
 22 *may be played or shown in or at any location where tobacco*
 23 *products are offered for sale.*

24 *(d) NO RESTRICTIVE COVENANTS.—No participating*
 25 *tobacco product manufacturer or distributor of tobacco*

1 *products may enter into any arrangement with a retailer*
 2 *that limits the retailer's ability to display any form of ad-*
 3 *vertising or promotional material originating with another*
 4 *supplier and permitted by law to be displayed in a retail*
 5 *establishment.*

6 *(e) DEFINITIONS.—As used in this section, the terms*
 7 *“point-of-sale advertisement” and “point-of-sale advertis-*
 8 *ing” mean all printed or graphical materials bearing the*
 9 *brand name (alone or in conjunction with any other word),*
 10 *logo, symbol, motto, selling message, or any other indicia*
 11 *of product identification identical or similar to, or identifi-*
 12 *able with, those used for any brand of cigarettes or smokeless*
 13 *tobacco, which, when used for its intended purpose, can rea-*
 14 *sonably be anticipated to be seen by customers at a location*
 15 *where tobacco products are offered for sale.*

16 ***TITLE II—REDUCTIONS IN***
 17 ***UNDERAGE TOBACCO USE***
 18 ***Subtitle A—Underage Use***

19 ***SEC. 201. GOALS FOR REDUCING UNDERAGE TOBACCO USE.***

20 *(a) GOALS.—As part of a comprehensive national to-*
 21 *bacco control policy, the Secretary, working in cooperation*
 22 *with State, Tribal, and local governments and the private*
 23 *sector, shall take all actions under this Act necessary to en-*
 24 *sure that the required percentage reductions in underage*
 25 *use of tobacco products set forth in this title are achieved.*

1 (b) *REQUIRED REDUCTIONS FOR CIGARETTES.*—With
 2 respect to cigarettes, the required percentage reduction in
 3 underage use, as set forth in **[section 202] section 5771**
 4 **of the Internal Revenue Code of 1986**, means—

<i>Calendar Year After Date of Enactment</i>	<i>Required Percentage Reduction as a Percent- age of Base Incidence Percentage in Underage Cigarette Use</i>
<i>Years 3 and 4</i>	<i>15 percent</i>
<i>Years 5 and 6</i>	<i>30 percent</i>
<i>Years 7, 8, and 9</i>	<i>50 percent</i>
<i>Year 10 and thereafter</i>	<i>60 percent</i>

5 (c) *REQUIRED REDUCTIONS FOR SMOKELESS TO-*
 6 *BACCO.*—With respect to smokeless tobacco products, the re-
 7 quired percentage reduction in underage use, as set forth
 8 in **[section 202] section 5771 of the Internal Reve-**
 9 **nue Code of 1986**, means—

<i>Calendar Year After Date of Enactment</i>	<i>Required Percentage Reduction as a Percent- age of Base Incidence Percentage in Underage Smokeless Tobacco Use</i>
<i>Years 3 and 4</i>	<i>12.5 percent</i>
<i>Years 5 and 6</i>	<i>25 percent</i>
<i>Years 7, 8, and 9</i>	<i>35 percent</i>
<i>Year 10 and thereafter</i>	<i>45 percent</i>

10 **[SEC. 202. LOOK-BACK ASSESSMENT.]**

11 **[(a) DETERMINATION OF UNDERAGE USE.**—Upon the
 12 conclusion of the third calendar year after the date of enact-
 13 ment of this Act, and annually thereafter, the Secretary
 14 shall determine the percent incidence of underage use of
 15 cigarettes and of smokeless tobacco by calculating the aver-
 16 age, weighted by relative population of such age groups in
 17 1995 as determined by the Bureau of the Census, of the per-

1 *centages of individuals in grade 12 (ages 16 and 17), in*
2 *grade 10 (ages 14 and 15), and in grade 8 (age 13) who*
3 *used cigarettes or smokeless tobacco, as appropriate, on a*
4 *daily basis during the preceding calendar year. The per-*
5 *centages used in this calculation are to be those measured*
6 *by (1) the University of Michigan Survey, or (2) such com-*
7 *parable index using identical methodology as is chosen by*
8 *the Secretary after notice and the opportunity for comment*
9 *in accordance with section 553 of title 5, United States*
10 *Code. If the methodology employed by the University of*
11 *Michigan Survey is changed in a material manner from*
12 *that employed from 1986 through 1996 (including changes*
13 *in the States or regions on which the University of Michi-*
14 *gan Survey is based), or is (in the opinion of the Secretary)*
15 *no longer the best available data, the Secretary shall use*
16 *the percentages measured by an index chosen by the Sec-*
17 *retary, after notice and the opportunity for comment in ac-*
18 *cordance with section 553 of title 5, United States Code,*
19 *that has a methodology identical to that employed by the*
20 *University of Michigan Survey from 1986 through 1996.*
21 *The Secretary shall make the data on which the results of*
22 *the University of Michigan Survey or such other com-*
23 *parable index are based available to the public upon re-*
24 *quest.*

1 **[(b) CALCULATION OF NON-ATTAINMENT PEN-**
 2 *ALTIES.—*

3 **[(1) SECRETARY TO DETERMINE NON-ATTAIN-**
 4 *MENT PERCENTAGE.—The Secretary shall determine*
 5 *the non-attainment percentage for cigarettes and for*
 6 *smokeless tobacco for each calendar year.*

7 **[(2) NON-ATTAINMENT PENALTY FOR CIGA-**
 8 *RETTES.—For each calendar year in which the per-*
 9 *centage reduction in underage use required by section*
 10 *201(b) is not attained, the Secretary shall assess a*
 11 *penalty on cigarette manufacturers as follows:*

<i>If the non-attainment per- centage is:</i>	<i>The penalty is:</i>
<i>Not more than 5 percent</i>	<i>\$80,000,000 multiplied by the non-attainment percentage</i>
<i>More than 5% but not more than 10%</i>	<i>\$400,000,000, plus \$160,000,000 multiplied by the non-attainment percentage in excess of 5% but not in excess of 10%</i>
<i>More than 10% but not more than 20%</i>	<i>\$1,200,000,000, plus \$240,000,000 multiplied by the non-attainment percentage in excess of 10% but not in excess of 20%</i>
<i>More than 20%</i>	<i>\$3,500,000,000</i>

12 **[(3) NON-ATTAINMENT PENALTY FOR SMOKE-**
 13 *LESS TOBACCO.—For each year in which the percent-*
 14 *age reduction in underage use required by section*
 15 *201(c) is not attained, the Secretary shall assess a*
 16 *penalty on smokeless tobacco product manufacturers*
 17 *as follows:*

<i>If the non-attainment percentage is:</i>	<i>The penalty is:</i>
<i>Not more than 5 percent</i>	<i>\$8,000,000 multiplied by the non-attainment percentage</i>
<i>More than 5% but not more than 10%</i>	<i>\$40,000,000, plus \$16,000,000 multiplied by the non-attainment percentage in excess of 5% but not in excess of 10%</i>
<i>More than 10% but not more than 20%</i>	<i>\$120,000,000, plus \$24,000,000 multiplied by the non-attainment percentage in excess of 10% but not in excess of 20%</i>
<i>More than 20%</i>	<i>\$350,000,000</i>

1 **[(4) PENALTIES TO BE ADJUSTED FOR INFLA-**
2 **TION.—**

3 **[(A) IN GENERAL.—***Beginning with the*
4 *fourth calendar year after the date of enactment*
5 *of this Act, each dollar amount in the tables in*
6 *paragraphs (2) and (3) shall be increased by the*
7 *inflation adjustment.*

8 **[(B) INFLATION ADJUSTMENT.—***For pur-*
9 *poses of subparagraph (A), the inflation adjust-*
10 *ment for any calendar year is the percentage (if*
11 *any) by which—*

12 **[(i) the CPI for the preceding calendar**
13 *year, exceeds*

14 **[(ii) the CPI for the calendar year**
15 *1998.*

16 **[(C) CPI.—***For purposes of subparagraph*
17 *(B), the CPI for any calendar year is the aver-*
18 *age of the Consumer Price Index for all-urban*

1 *consumers published by the Department of*
 2 *Labor.*

3 **[(D) ROUNDING.—***If any increase deter-*
 4 *mined under subparagraph (A) is not a multiple*
 5 *of \$1,000, the increase shall be rounded to the*
 6 *nearest multiple of \$1,000.*

7 **[(c) JOINT, SEVERAL, AND STRICT OBLIGATION FOR**
 8 **PENALTIES.—**

9 **[(1) CIGARETTE MANUFACTURERS.—***Any pen-*
 10 *alty due and payable by cigarette manufacturers shall*
 11 *be the joint, several, and strict obligation of such*
 12 *manufacturers.*

13 **[(2) SMOKELESS TOBACCO.—***Any penalty pay-*
 14 *able by smokeless tobacco product manufacturers shall*
 15 *be the joint, several, and strict obligation of such*
 16 *manufacturers.*

17 **[(d) EXEMPTIONS FOR SMALL MANUFACTURERS.—**

18 **[(1) ALLOCATION BY MARKET SHARE.—***The Sec-*
 19 *retary shall make such allocations according to each*
 20 *manufacturer's share of the domestic cigarette or do-*
 21 *mestic smokeless tobacco market, as appropriate, in*
 22 *the year for which the penalty is being assessed, based*
 23 *on actual Federal excise tax payments.*

24 **[(2) EXEMPTION.—***In any year in which a pen-*
 25 *alty is being assessed, the Secretary shall exempt from*

1 *payment any tobacco product manufacturer with less*
 2 *than 1 percent of the domestic market share for a spe-*
 3 *cific category of tobacco product unless the Secretary*
 4 *finds that the manufacturer's brands used by under-*
 5 *age individuals at a rate equal to or greater than the*
 6 *manufacturer's total market share for the type of to-*
 7 *bacco product.*

8 **[(e) METHOD OF PENALTY ASSESSMENT.—***The Sec-*
 9 *retary shall assess a penalty for a specific calendar year*
 10 *on or before May 1 of the subsequent calendar year. Penalty*
 11 *payments shall be paid on or before July 1 of the year in*
 12 *which they are assessed. The Secretary may establish, by*
 13 *regulation, interest at a rate up to 3 times the prevailing*
 14 *prime rate at the time the penalty is assessed, and addi-*
 15 *tional charges in an amount up to 3 times the penalty,*
 16 *for late payment of the penalty.*

17 **[(f) BUSINESS EXPENSE DEDUCTION.—***Any penalty*
 18 *paid by a tobacco product manufacturer under this section*
 19 *shall not be deductible as an ordinary and necessary busi-*
 20 *ness expense or otherwise under the Internal Revenue Code*
 21 *of 1986.*

22 **[(g) PENALTY LIABILITY AMONG MANUFACTURERS.—**
 23 **[(1) IN GENERAL.—***The District Courts of the*
 24 *United States shall have jurisdiction to adjudicate*
 25 *any claim brought under this section by a tobacco*

1 *product manufacturer against one or more other to-*
 2 *bacco product manufacturers—*

3 **[(A)** *to recover a portion of the penalty*
 4 *paid by the plaintiff manufacturer; or*

5 **[(B)** *for a reallocation of the penalty*
 6 *among tobacco product manufacturers.*

7 **[(2) CONTRIBUTION OR REIMBURSEMENT LI-**
 8 *ABILITY.—A tobacco product manufacturer shall be*
 9 *liable under this subsection to one or more other man-*
 10 *ufacturers if the plaintiff tobacco product manufac-*
 11 *turer establishes by a preponderance of the evidence*
 12 *that the defendant tobacco product manufacturer,*
 13 *through its acts or omissions, was responsible for a*
 14 *disproportionate share of the non-attainment penalty*
 15 *as compared to the responsibility of the plaintiff*
 16 *manufacturer, as contemplated in subsection (c)(3).*

17 **[(3) RESPONSIBILITY FOR AGENTS, ETC.—In**
 18 *any action brought under this subsection, a tobacco*
 19 *product manufacturer shall be held responsible for*
 20 *any act or omission of its attorneys, advertising agen-*
 21 *cies, or other agents that contributed to that manufac-*
 22 *turer's responsibility for the penalty assessed under*
 23 *this section.】*

1 **SEC. 203. SUBSTANTIAL NON-ATTAINMENT OF REQUIRED**
2 **REDUCTIONS.**

3 (a) *ACTION BY SECRETARY.*—

4 (1) *IN GENERAL.*—*If the Secretary determines*
5 *that the non-attainment percentage for any year is*
6 *greater than 20 percentage points for cigarettes or*
7 *smokeless tobacco, then the Secretary shall determine,*
8 *on a brand-by-brand basis, using data that reflects a*
9 *1999 baseline, which tobacco product manufacturers*
10 *are responsible within the 2 categories of tobacco*
11 *products for the excess. The Secretary may commence*
12 *an action under this section against the tobacco prod-*
13 *uct manufacturer or manufacturers of the brand or*
14 *brands of cigarettes or smokeless tobacco products for*
15 *which the non-attainment percentage exceeded 20 per-*
16 *centage points.*

17 (2) *DETERMINATION.*—*The Secretary shall use*
18 *research methodology that is similar to, or the same*
19 *as, that used in the University of Michigan Survey,*
20 *except—*

21 (A) *the methodology shall be adapted to de-*
22 *termining underage usage by brand; and*

23 (B) *the base period shall be calendar year*
24 *1999.*

25 (b) *PROCEDURES.*—*Any action under this section shall*
26 *be commenced by the Secretary in the United States Dis-*

1 *strict Court for the District of Columbia within 90 days*
 2 *after publication in the Federal Register of the determina-*
 3 *tion that the non-attainment percentage for the tobacco*
 4 *product in question is greater than 20 percentage points.*
 5 *Any such action shall be heard and determined by a 3-judge*
 6 *court under section 2284 of title 28, United States Code.*

7 *(c) DETERMINATION BY COURT.—In any action under*
 8 *this section, the court shall determine whether the prepon-*
 9 *derance of the evidence shows that a tobacco product manu-*
 10 *facturer—*

11 *(1) has failed to comply substantially with the*
 12 *provisions of this Act regarding underage tobacco use,*
 13 *of any rules or regulations promulgated thereunder,*
 14 *or of any Federal or State laws regarding underage*
 15 *tobacco use;*

16 *(2) has taken any material action to undermine*
 17 *the achievement of the required percentage reduction*
 18 *for the tobacco product in question; or*

19 *(3) has failed to comply with all recommenda-*
 20 *tions of the Tobacco Agreement Accountability Panel*
 21 *established under section 801.*

22 *(d) REMOVAL OF ANNUAL AGGREGATE PAYMENT LIM-*
 23 *ITATION.—Except as provided in subsections (e) and (g), if*
 24 *the court determines that the preponderance of the evidence*
 25 *shows that a tobacco product manufacturer engaged in con-*

1 duct described in subsection (c) then section 706(c) of this
 2 Act does not apply to the enforcement against, or the pay-
 3 ment by, such tobacco product manufacturer of any judg-
 4 ment or settlement that becomes final after that determina-
 5 tion is made. The liability apportionment agreement de-
 6 scribed in section 706(e) of this Act shall not require that
 7 other tobacco product manufacturers pay an increased
 8 amount in any year over the amount they would have had
 9 to pay but for this section.

10 (e) *DEFENSE.*—An action under this section shall be
 11 dismissed, and subsection (d) shall not apply, if the court
 12 finds that the Secretary’s determination under subsection
 13 (a) was unlawful under subparagraph (A), (B), (C), or (D)
 14 of section 706(2) of title 5, United States Code. Any judg-
 15 ments paid under section 706(c) of this Act and section
 16 (1)(d)(3) of the Protocol prior to a final judgment determin-
 17 ing that the Secretary’s determination was erroneous shall
 18 be fully credited, with interest, under section 707(e) of this
 19 Act and section (1)(d)(3) of the Protocol.

20 (f) *REVIEW.*—Decisions of the court under this section
 21 are reviewable only by the Supreme Court by writ of certio-
 22 rari granted upon the petition of any party. The applicabil-
 23 ity of subsection (d) shall be stayed during the pendency
 24 of any such petition or review.

1 (g) *CONTINUING EFFECT.*—Subsection (d) shall cease
2 to apply to a tobacco product manufacturer found to have
3 engaged in conduct described in subsection (c) upon the
4 later of—

5 (1) a determination by the Secretary under sec-
6 tion 201 after the commencement of action under sub-
7 section (a) that the non-attainment percentage for the
8 tobacco product in question is 20 or fewer percentage
9 points; or

10 (2) a finding by the court in an action filed
11 against the Secretary by the manufacturer, not earlier
12 than 2 years after the determination described in sub-
13 section (c) becomes final, that the preponderance of
14 the evidence shows that, in the period since that deter-
15 mination, the manufacturer—

16 (A) has complied with the provisions of this
17 Act regarding underage tobacco use, of any rules
18 or regulations promulgated thereunder, and of
19 any other applicable Federal, State, or local
20 laws, rules, or regulations;

21 (B) has not taken any action to undermine
22 the achievement of the required percentage reduc-
23 tion for the tobacco product in question; and

24 (C) has pursued substantial additional
25 measures reasonably calculated to attain the re-

1 *quired percentage reduction for the tobacco prod-*
2 *uct in question.*

3 *A judgment or settlement against the tobacco product man-*
4 *ufacturer that becomes final after a determination or find-*
5 *ing described in paragraph (1) or (2) of this subsection is*
6 *not subject to subsection (d). An action under paragraph*
7 *(2) of this subsection shall be commenced in the United*
8 *States District Court for the District of Columbia, and shall*
9 *be heard and determined by a 3-judge court under section*
10 *2284 of title 28, United States Code. A decision by the court*
11 *under paragraph (2) of this subsection is reviewable only*
12 *by the Supreme Court by writ of certiorari granted upon*
13 *the petition of any party, and the decision shall be stayed*
14 *during the pendency of the petition or review. A determina-*
15 *tion or finding described in paragraph (1) or (2) of this*
16 *subsection does not limit the Secretary's authority to bring*
17 *a subsequent action under this section against any tobacco*
18 *product manufacturer or the applicability of subsection (d)*
19 *with respect to any such subsequent action.*

20 *(h) DEFINITIONS.—The definitions set forth in section*
21 *701 of this Act apply to terms used in this section. A judg-*
22 *ment or settlement becomes final within the meaning of this*
23 *section when it would qualify as a final judgment or final*
24 *settlement under section 701.*

1 **SEC. 204. DEFINITIONS.**

2 *As used in this subtitle—*

3 (1) *The term “base incidence percentage”*
4 *means—*

5 (A) *in the case of cigarettes, the average,*
6 *weighted by relative population of the following*
7 *age groups in 1995 as determined by the Bureau*
8 *of the Census, of (i) the average of the percent-*
9 *ages of individuals in grade 12 (ages 16 and 17)*
10 *from 1986 to 1996 who used cigarettes on a*
11 *daily basis; (ii) the average of the percentages of*
12 *individuals in grade 10 (ages 14 and 15) from*
13 *1991 to 1996 who used cigarettes on a daily*
14 *basis; and (iii) the average of the percentages of*
15 *individuals in grade 8 (age 13) from 1991 to*
16 *1996 who used cigarettes on a daily basis; and*

17 (B) *in the case of smokeless tobacco prod-*
18 *ucts, the average, weighted by relative population*
19 *of the following age groups in 1995 as deter-*
20 *mined by the Bureau of the Census, of the per-*
21 *centage of individuals in grade 12 (ages 16 and*
22 *17), individuals in grade 10 (ages 14 and 15),*
23 *and individuals in grade 8 (age 13) who used*
24 *smokeless tobacco products on a daily basis in*
25 *1996.*

1 *The percentages specified in this paragraph are those meas-*
 2 *ured by the University of Michigan Survey or by such com-*
 3 *parable index using identical methodology as is chosen by*
 4 *the Secretary after notice and the opportunity for comment*
 5 *in accordance with section 553 of title 5, United States*
 6 *Code.*

7 (2) *The term “cigarette manufacturers” means*
 8 *manufacturers of cigarettes sold in the United States.*

9 (3) *The term “non-attainment percentage for*
 10 *cigarettes” means the number of percentage points*
 11 *yielded—*

12 (A) *for a calendar year in which the per-*
 13 *cent incidence of underage use of cigarettes is less*
 14 *than the base incidence percentage, by subtract-*
 15 *ing—*

16 (i) *the percentage by which the percent*
 17 *incidence of underage use of cigarettes in*
 18 *that year is less than the base incidence per-*
 19 *centage, from*

20 (ii) *the required percentage reduction*
 21 *applicable in that year; and*

22 (B) *for a calendar year in which the per-*
 23 *cent incidence of underage use of cigarettes is*
 24 *greater than the base incidence percentage, add-*
 25 *ing—*

1 (i) the percentage by which the percent
 2 incidence of underage use of cigarettes in
 3 that year is greater than the base incidence
 4 percentage; and

5 (ii) the required percentage reduction
 6 applicable in that year.

7 (4) The term “non-attainment percentage for
 8 smokeless tobacco products” means the number of per-
 9 centage points yielded—

10 (A) for a calendar year in which the per-
 11 cent incidence of underage use of smokeless to-
 12 bacco products is less than the base incidence
 13 percentage, by subtracting—

14 (i) the percentage by which the percent
 15 incidence of underage use of smokeless to-
 16 bacco products in that year is less than the
 17 base incidence percentage, from

18 (ii) the required percentage reduction
 19 applicable in that year; and

20 (B) for a calendar year in which the per-
 21 cent incidence of underage use of smokeless to-
 22 bacco products is greater than the base incidence
 23 percentage, by adding—

24 (i) the percentage by which the percent
 25 incidence of underage use of smokeless to-

1 *bacco products in that year is greater than*
 2 *the base incidence percentage; and*

3 (ii) *the required percentage reduction*
 4 *applicable in that year.*

5 (5) *The term “smokeless tobacco product manu-*
 6 *facturers” means manufacturers of smokeless tobacco*
 7 *products sold in the United States.*

8 (6) *The term “University of Michigan Survey”*
 9 *means the University of Michigan’s National High*
 10 *School Drug Use Survey entitled “Monitoring the Fu-*
 11 *ture”.*

12 ***Subtitle B—State Enforcement***
 13 ***Incentives***

14 ***[SEC. 211. COMPLIANCE BONUS FUND.***

15 ***[(a) ESTABLISHMENT.—****There is established within*
 16 *the National Tobacco Settlement Trust Fund established by*
 17 *section 401 a separate account to be known as the Compli-*
 18 *ance Bonus Account for States and Retailers. There are au-*
 19 *thorized to be appropriated from such account such*
 20 *amounts as may be necessary to carry out the provisions*
 21 *of this subtitle.*

22 ***[(b) CREDITS TO ACCOUNT.—****For each fiscal year*
 23 *there shall be credited to the Account an amount equal to—*

1 **[(1) 5 percent of the amounts credited to the Na-**
 2 *tional Tobacco Settlement Trust Fund under section*
 3 *401(b)(3); and*

4 **[(2) any amounts withheld under section 213.]**

5 **SEC. 212. BLOCK GRANTS.**

6 *(a) IN GENERAL.—The Secretary shall award block*
 7 *grants to States determined to be eligible under subsection*
 8 *(b).*

9 *(b) ELIGIBLE STATES.—To be eligible to receive a*
 10 *grant under subsection (a), a State shall—*

11 *(1) prepare and submit to the Secretary an ap-*
 12 *plication, at such time, in such manner, and contain-*
 13 *ing such information as the Secretary may require;*
 14 *and*

15 *(2) with respect to the year involved, dem-*
 16 *onstrate to the satisfaction of the Secretary that fewer*
 17 *than 5 percent of all individuals under 18 years of*
 18 *age who attempt to purchase tobacco products in the*
 19 *State in such year are successful in such purchase.*

20 *(c) PAYOUT; USE OF FUNDS.—*

21 *(1) ANNUAL DISTRIBUTION.—For each fiscal*
 22 *year in which one or more States is eligible to receive*
 23 *a grant under this section, the Secretary shall pay*
 24 *out [the balance in the account established under sec-*
 25 *tion 211(a) as of the end of the preceding fiscal year]*

1 ***any amount appropriated for such fiscal***
 2 ***year.***

3 (2) *PAYMENT TO STATE.—If more than one State*
 4 *is eligible to receive a grant under this section for any*
 5 *fiscal year, the amount payable for that fiscal year*
 6 *shall be apportioned among such eligible States on the*
 7 *basis of population.*

8 (3) *USE OF FUNDS.—Each State that receives a*
 9 *grant under this section shall distribute half of the*
 10 *amount received among retail outlets of tobacco prod-*
 11 *ucts that, for fiscal year for which the State met the*
 12 *requirements of subsection (b), have outstanding*
 13 *records of compliance with the restrictions on under-*
 14 *age sales of tobacco products.*

15 **SEC. 213. STATE ENFORCEMENT INCENTIVES.**

16 (a) *IN GENERAL.—*

17 (1) *ACTIVITIES AND REPORTS REGARDING EN-*
 18 *FORCEMENT.—A State shall—*

19 (A) *conduct monthly random, unannounced*
 20 *inspections of sales or distribution outlets in the*
 21 *State to ensure compliance with a law prohibit-*
 22 *ing sales of tobacco products to individuals*
 23 *under 18 years of age;*

24 (B) *annually submit to the Secretary a re-*
 25 *port describing—*

1 (i) the activities carried out by the
2 State to enforce underage access laws dur-
3 ing the fiscal year; and

4 (ii) the extent of success the State has
5 achieved in reducing the availability of to-
6 bacco products to individuals under the age
7 of 18 years; and

8 (C)(i) a detailed description of how the in-
9 spections described in subparagraph (A) were
10 conducted and the methods used to identify out-
11 lets, with appropriate protection for the con-
12 fidentiality of information regarding the timing
13 of inspections and other investigative techniques
14 whose effectiveness depends on continued con-
15 fidentiality;

16 (ii) the identity of the single State agency
17 designated by the Governor of the State to be re-
18 sponsible for the implementation of the require-
19 ments of this section.

20 (2) *MINIMUM INSPECTION SCHEDULE.*—In order
21 to meet the requirements of paragraph (1)(A), inspec-
22 tions conducted by the State shall include at least 250
23 random, unannounced inspections of retail sale out-
24 lets annually for each 1,000,000 persons resident in
25 the State, as most recently determined by the Bureau

1 *of the Census. Such inspections shall cover a range of*
2 *outlets (not preselected on the basis of prior viola-*
3 *tions) to measure overall levels of compliance as well*
4 *as to identify violations, and shall be conducted to*
5 *provide a probability sample of outlets. The sample*
6 *must reflect the distribution of the population under*
7 *the age of 18 years throughout the State and the dis-*
8 *tribution of the outlets throughout the State accessible*
9 *to youth. Indian tribes shall conduct such inspections*
10 *monthly of at least 1 retail outlet subject to their ju-*
11 *risdiction for each 4,000 reservation residents. Except*
12 *as provided in this paragraph, any reports required*
13 *by this paragraph shall be made public. As used in*
14 *this paragraph, the term “outlet” refers to any loca-*
15 *tion that sells at retail or otherwise distributes to-*
16 *bacco products to consumers, including to locations*
17 *that sell such products over-the-counter.*

18 **(b) NONCOMPLIANCE.—**

19 **(1) INSPECTIONS.—***The Secretary shall withhold*
20 *from any State that fails to meet the requirements of*
21 *subsection (a) in any calendar year an amount equal*
22 *to an amount equal to 5 percent of the amount other-*
23 *wise payable under this subtitle to that State for the*
24 *next fiscal year.*

1 (2) *COMPLIANCE RATE.*—*The Secretary shall*
 2 *withhold from any State that fails to demonstrate a*
 3 *compliance rate of—*

4 (A) *at least 75 percent in the fifth and sixth*
 5 *fiscal years after the date of enactment of the*
 6 *National Tobacco Policy and Youth Smoking*
 7 *Act;*

8 (B) *at least 85 percent in the seventh,*
 9 *eighth, and ninth fiscal years after such date;*
 10 *and*

11 (C) *at least 90 percent in every fiscal year*
 12 *beginning with the tenth fiscal year after such*
 13 *date,*

14 *an amount equal to one percentage point for each per-*
 15 *centage point by which the State failed to meet the*
 16 *percentage set forth in this subsection for that year*
 17 *from the amount otherwise payable under this subtitle*
 18 *for that fiscal year.*

19 (c) *DEFINITION.*—*For the purposes of this section, the*
 20 *term “first applicable fiscal year” means the first fiscal*
 21 *year beginning after the fiscal year in which funding is*
 22 *made available to the States under this section.*

23 (f) *RELEASE AND DISBURSEMENT.*—

24 (1) *Upon notice from the Secretary that an*
 25 *amount payable under section 202(e) has been ordered*

1 *withheld under subsection (b), a State may petition*
2 *the Secretary for a release and disbursement of up to*
3 *75 percent of the amount withheld, and shall give*
4 *timely written notice of such petition to the attorney*
5 *general of that State and to all tobacco product man-*
6 *ufacturers.*

7 *(2) The agency shall conduct a hearing on such*
8 *a petition, in which the attorney general of the State*
9 *and tobacco product manufacturers may participate*
10 *and be heard.*

11 *(3) The burden shall be on the State to prove, by*
12 *a preponderance of the evidence, that the release and*
13 *disbursement should be made. The Secretary's deci-*
14 *sion on whether to grant such a release, and the*
15 *amount of any such disbursement, shall be based on*
16 *whether—*

17 *(A) the State has acted in good faith and in*
18 *full compliance with this Act, and any rules or*
19 *regulations promulgated under this Act;*

20 *(B) the State has pursued all reasonably*
21 *available measures to attain the compliance*
22 *rates and required percentage reductions appli-*
23 *cable in the year for which the release is being*
24 *sought;*

1 (C) there is evidence of any direct or indi-
2 rect action by the State to undermine the
3 achievement of the compliance rates, the required
4 percentage reductions, or other terms and objec-
5 tives of this Act or the National Tobacco Policy
6 and Youth Smoking Reduction Act; and

7 (D) any other relevant evidence.

8 (4) A State shall be entitled to interest on any
9 withheld amount released at the average United
10 States 52-Week Treasury Bill rate for the period be-
11 tween the withholding of the amount and its release.

12 (5) Any State attorney general or tobacco product
13 manufacturer aggrieved by a final decision on a peti-
14 tion filed under this subsection may seek judicial re-
15 view of such decision within 30 days in the United
16 States Court of Appeals for the District of Columbia
17 Circuit. Unless otherwise specified in this Act, judi-
18 cial review under this section shall be governed by
19 sections 701 through 706 of title 5, United States
20 Code.

21 (6) No stay or other injunctive relief enjoining a
22 reduction in a State's allotment pending appeal or
23 otherwise may be granted by the Secretary or any
24 court.

1 **SEC. 214. CONFORMING CHANGE.**

2 Section 1926 of the Public Health Service Act (42
3 U.S.C. 300x—26) is hereby repealed.

4 **Subtitle C—Other Programs**

5 **SEC. 221. NATIONAL SMOKING CESSATION PROGRAM.**

6 (a) *ESTABLISHMENT.*—The Secretary shall establish a
7 program to be known as the “National Smoking Cessation
8 Program” under which the Secretary may award grants to
9 eligible public and nonprofit entities and individuals for
10 tobacco product use cessation purposes.

11 (b) *ELIGIBILITY.*—

12 (1) *OF ENTITIES.*—To be eligible to receive a
13 grant under this section an entity shall—

14 (A) be a public or nonprofit private entity,
15 including community health centers and other
16 community-based organizations with a focus on
17 low-income populations;

18 (B) prepare and submit to the Secretary an
19 application at such time, in such manner, and
20 containing such information as the Secretary
21 may require;

22 (C) provide assurances that amounts re-
23 ceived under the grant will be used in accordance
24 with subsection (c)(1); and

25 (D) meet any other requirements deter-
26 mined appropriate by the Secretary.

1 (2) *OF INDIVIDUALS.*—*To be eligible to receive a*
2 *grant under this section an individual shall—*

3 (A) *prepare and submit to the Secretary an*
4 *application at such time, in such manner, and*
5 *containing such information as the Secretary*
6 *may require;*

7 (B) *provide assurances that amounts re-*
8 *ceived under the grant will be used only in ac-*
9 *cordance with subsection (c)(2); and*

10 (C) *meet any other requirements determined*
11 *appropriate by the Secretary.*

12 (c) *USE OF FUNDS.*—

13 (1) *BY ENTITIES.*—*An entity that receives a*
14 *grant under this section shall use amounts provided*
15 *under the grant to establish or administer tobacco*
16 *product use cessation programs that are approved in*
17 *accordance with subsection (d).*

18 (2) *BY INDIVIDUALS.*—*An individual who re-*
19 *ceives a grant under this section shall use amounts*
20 *provided under the grant to enroll in a tobacco prod-*
21 *uct use cessation program or to purchase a tobacco*
22 *product use cessation product that has been approved*
23 *in accordance with subsection (d). Grants to individ-*
24 *uals under this section may be in the form of vouchers*
25 *that may be used to pay the costs of enrollment in an*

1 *approved program or to purchase an approved prod-*
2 *uct.*

3 (d) *APPROVAL OF CESSATION PROGRAM OR DE-*
4 *VICES.—Using the best available scientific information, the*
5 *Secretary shall promulgate regulations to provide for the*
6 *approval of tobacco product use cessation programs and*
7 *drugs, human biological products, or medical devices ap-*
8 *proved by the Food and Drug Administration or otherwise*
9 *legally marketed under the Federal Food, Drug, and Cos-*
10 *metic Act (21 U.S.C. 301 et seq.) or under the Public Health*
11 *Service Act (42 U.S.C. 201 et seq.) for use as smoking ces-*
12 *sation therapies or aids. The regulations shall ensure that*
13 *tobacco product users—*

14 (1) *have reasonable access upon request to such*
15 *comprehensive tobacco use cessation programs and*
16 *drugs, human biological products, or medical devices;*
17 *and*

18 (2) *have access to a broad range of cessation op-*
19 *tions that are tailored to the needs of the individual*
20 *tobacco user.*

21 (e) *MINORITY FOCUS.—The Secretary shall ensure*
22 *smoking cessation programs are directed to include minor-*
23 *ity populations in proportion to their prevalence in the*
24 *smoking population, and are linguistically and culturally*
25 *appropriate for such populations.*

1 (f) *FUNDING.*—*There are authorized to be appro-*
 2 *priated from the National Tobacco Settlement Trust Fund,*
 3 *other than from amounts in the State Litigation Settlement*
 4 *Account, such sums as may be necessary to carry out this*
 5 *section.*

6 **SEC. 222. NATIONAL TOBACCO-FREE PUBLIC EDUCATION**
 7 **PROGRAM.**

8 (a) *ESTABLISHMENT OF BOARD.*—

9 (1) *IN GENERAL.*—*The Secretary shall establish*
 10 *an independent board to be known as the “Tobacco-*
 11 *Free Education Board” (referred to in this section as*
 12 *the “Board”) to enter into contracts with or award*
 13 *grants to eligible public and nonprofit private entities*
 14 *to carry out public informational and educational ac-*
 15 *tivities designed to reduce the use of tobacco products.*

16 (2) *APPOINTMENT.*—*The Board shall be com-*
 17 *posed of 9 members to be appointed by the Secretary,*
 18 *of whom—*

19 (A) *at least 3 such members shall be indi-*
 20 *viduals who are widely recognized by the general*
 21 *public for achievement in the athletic, cultural,*
 22 *entertainment, educational, business, or political*
 23 *field; and*

1 (B) *at least 3 such members shall be indi-*
2 *viduals who are heads of major public health or-*
3 *ganizations.*

4 (3) *TERMS AND VACANCIES.—The members of the*
5 *Board shall serve staggered terms as determined ap-*
6 *propriate at the time of appointment by the Sec-*
7 *retary. A vacancy in the Board shall not affect its*
8 *powers, but shall be filled in the same manner as the*
9 *original appointment.*

10 (4) *POWERS.—*

11 (A) *HEARINGS.—The Board may hold such*
12 *hearings, sit and act at such times and places,*
13 *take such testimony, and receive such evidence as*
14 *the Board considers advisable to carry out the*
15 *purposes of this section.*

16 (B) *INFORMATION FROM FEDERAL AGEN-*
17 *CIES.—The Board may secure directly from any*
18 *Federal department or agency such information*
19 *as the Board considers necessary to carry out the*
20 *provisions of this section.*

21 (5) *PERSONNEL MATTERS.—*

22 (A) *COMPENSATION.—Each member of the*
23 *Board who is not an officer or employee of the*
24 *Federal Government shall be compensated at a*
25 *rate equal to the daily equivalent of the annual*

1 *rate of basic pay prescribed for level IV of the*
2 *Executive Schedule under section 5315 of title 5,*
3 *United States Code, for each day (including*
4 *travel time) during which such member is en-*
5 *gaged in the performance of the duties of the*
6 *Board. All members of the Board who are officers*
7 *or employees of the United States shall serve*
8 *without compensation in addition to that re-*
9 *ceived for their services as officers or employees*
10 *of the United States.*

11 *(B) TRAVEL EXPENSES.—The members of*
12 *the Board shall be allowed travel expenses, in-*
13 *cluding per diem in lieu of subsistence, at rates*
14 *authorized for employees of agencies under sub-*
15 *chapter I of chapter 57 of title 5, United States*
16 *Code, while away from their homes or regular*
17 *places of business in the performance of services*
18 *for the Board.*

19 *(b) ESTABLISHMENT OF PROGRAM.—The Secretary*
20 *shall establish a program to be known as the “National To-*
21 *bacco-Free Public Education Program” under which the*
22 *Board may enter into contracts with or award grants to*
23 *eligible public and nonprofit private entities to carry out*
24 *public informational and educational activities designed to*
25 *reduce the use of tobacco products.*

1 (c) *ELIGIBILITY.*—*To be eligible to receive a grant*
2 *under this section an entity shall—*

3 (1) *be a—*

4 (A) *public entity or a State; or*

5 (B) *nonprofit private entity that—*

6 (i) *is not affiliated with a tobacco*
7 *product manufacturer or importer;*

8 (ii) *has a demonstrated record of work-*
9 *ing effectively to reduce tobacco product use;*
10 *and*

11 (iii) *has expertise in conducting a*
12 *multi-media communications campaign, in-*
13 *cluding proven effective campaigns for mi-*
14 *nority populations;*

15 (2) *prepare and submit to the Secretary an ap-*
16 *plication at such time, in such manner, and contain-*
17 *ing such information as the Secretary may require,*
18 *including a description of the activities to be con-*
19 *ducted using amounts received under the grant or*
20 *contract;*

21 (3) *provide assurances that amounts received*
22 *under the grant will be used in accordance with sub-*
23 *section (d); and*

24 (4) *provide assurances to the Secretary that—*

1 (A) the entity will annually report to the
2 Secretary on the effectiveness of the approaches
3 implemented including approaches related to
4 high risk and minority populations;

5 (B) adequate records will be maintained
6 with respect to such assistance;

7 (C) amounts provided to individuals or en-
8 tities will be subject to independent audit; and

9 (D) activities of private entities or individ-
10 uals will be coordinated with State and local
11 public health officials in the planning and im-
12 plementation of the program; and

13 (5) meet any other requirements determined ap-
14 propriate by the Secretary.

15 (d) *USE OF FUNDS.*—An entity that receives a grant
16 or contract under this section shall use amounts provided
17 under the grant or contract to conduct multi-media public
18 educational or information campaigns that are designed to
19 discourage and de-glamorize the use of tobacco products.
20 Such campaigns shall be designed to discourage the initi-
21 ation of tobacco use by minors and other populations and
22 encourage those using such products to quit. These cam-
23 paigns shall include—

1 (1) *school-based programs that are focused on*
2 *those regions of the State with high smoking rates and*
3 *targeted at populations most at risk to start smoking;*

4 (2) *Statewide college and university based edu-*
5 *cation program to discourage individuals between the*
6 *ages of 18 and 24 from beginning to on colleges or*
7 *universities with high smoking rates; or*

8 (3) *community-based prevention programs that*
9 *are focused on those populations within the commu-*
10 *nity including minority populations, in proportion to*
11 *their prevalence in the smoking population that are*
12 *most at-risk to use tobacco products or that have been*
13 *targeted by tobacco advertising or marketing.*

14 (e) *NEEDS OF CERTAIN POPULATIONS.—In awarding*
15 *grants and contracts under this section, the Board shall*
16 *take into consideration the needs of particular populations,*
17 *including using methods that are proven and effective and*
18 *are culturally and linguistically appropriate.*

19 (f) *FUNDING.—There are authorized to be appro-*
20 *priated from the National Tobacco Settlement Trust Fund,*
21 *other than from amounts in the State Litigation Settlement*
22 *Account, such sums as may be necessary to carry out this*
23 *section.*

1 **SEC. 223. NATIONAL COMMUNITY ACTION PROGRAM.**

2 (a) *ESTABLISHMENT.*—*The Secretary shall establish a*
 3 *program to be known as the “National Community Action*
 4 *Program” under which the Secretary may award grants to*
 5 *eligible State and local governmental entities to carry out*
 6 *community-based tobacco control efforts that are designed*
 7 *to encourage community involvement in reducing tobacco*
 8 *product use.*

9 (b) *ELIGIBILITY.*—*To be eligible to receive a grant*
 10 *under this section an entity shall—*

11 (1) *be a State or local public entity;*

12 (2) *prepare and submit to the Secretary an ap-*
 13 *plication at such time, in such manner, and contain-*
 14 *ing such information as the Secretary may require;*

15 (3) *provide assurances that amounts received*
 16 *under the grant will be used in accordance with the*
 17 *purposes of this section; and*

18 (4) *meet any other requirements determined ap-*
 19 *propriate by the Secretary.*

20 (c) *FUNDING.*—*There are authorized to be appro-*
 21 *priated from the National Tobacco Settlement Trust Fund,*
 22 *other than from amounts in the State Litigation Settlement*
 23 *Account, such sums as may be necessary to carry out this*
 24 *section.*

25 **SEC. 224. STATE RETAIL LICENSING PROGRAM.**

26 (a) *GENERAL REQUIREMENTS.*—

1 (1) *ESTABLISHMENT OF PROGRAM.*—*The Sec-*
 2 *retary shall provide a block grant under this Act to*
 3 *each State that has in effect a law that—*

4 (A) *provides for the licensing of entities en-*
 5 *gaged in the sale or distribution of tobacco prod-*
 6 *ucts directly to consumers; and*

7 (B) *meets the standards described in this*
 8 *section.*

9 (2) *STATE AGREEMENT REQUIRED.*—*In order to*
 10 *receive a block grant under this section, a State—*

11 (A) *shall enter into an agreement with the*
 12 *Secretary to assume responsibilities for the im-*
 13 *plementation and enforcement of a tobacco re-*
 14 *tailer licensing program;*

15 (B) *shall ensure compliance with the Youth*
 16 *Access Restrictions regulations promulgated by*
 17 *the Secretary (21 C.F.R. 897.1 et seq.); and*

18 (C) *shall establish to the satisfaction of the*
 19 *Secretary that it has a law or regulation that in-*
 20 *cludes the following:*

21 (i) *LICENSURE AND NOTICE.*—*A State*
 22 *license is required for each retail establish-*
 23 *ment involved in the sale or distribution of*
 24 *tobacco products to consumers. The State*
 25 *has a program under which notice is pro-*

1 *vided to such establishments and their em-*
 2 *ployees of all licensing requirements and re-*
 3 *sponsibilities under State and Federal law*
 4 *relating to the retail distribution of tobacco*
 5 *products.*

6 (ii) *PENALTIES.—*

7 (I) *CRIMINAL.—Criminal pen-*
 8 *alties are provided for the sale or dis-*
 9 *tribution of tobacco products to a con-*
 10 *sumer without a license.*

11 (II) *CIVIL.—Civil penalties are*
 12 *provided for the sale or distribution of*
 13 *tobacco products in violation of State*
 14 *law, that include graduated fines and*
 15 *suspension or revocation of licenses, for*
 16 *repeated violations.*

17 (III) *OTHER.—There are other*
 18 *programs in place, including such*
 19 *measures as fines, suspension of driv-*
 20 *er's license privileges, or community*
 21 *service requirements, for underage*
 22 *youths who possess, purchase, or at-*
 23 *tempt to purchase tobacco products.*

24 (iii) *JUDICIAL REVIEW.—Judicial re-*
 25 *view procedures are in place for an action*

1 of the State suspending, revoking, denying,
 2 or refusing to renew any license under its
 3 program.

4 **(b) ENFORCEMENT.**—*Each State that receives a grant*
 5 *under this section shall undertake to enforce compliance*
 6 *with its tobacco retailing licensing program in a manner*
 7 *that can reasonably be expected to reduce the sale and dis-*
 8 *tribution of tobacco products to individuals under 18 years*
 9 *of age. If the Secretary determines that a State is not en-*
 10 *forcing the law in accordance with such an undertaking,*
 11 *the Secretary may withhold a portion of any unobligated*
 12 *funds under this section otherwise payable to that State.*

13 **(c) NON-PARTICIPATING STATES LICENSING REQUIRE-**
 14 **MENTS.**—*For retailers in States which have not established*
 15 *a licensing program under subsection (a), the Secretary*
 16 *may promulgate regulations establishing a Federal retail*
 17 *licensing program for retailers engaged in tobacco sales to*
 18 *consumers in those States. The Secretary may enter into*
 19 *agreements with States for the enforcement of those regula-*
 20 *tions. A State that enters into such an agreement shall re-*
 21 *ceive a grant under this section to reimburse it for costs*
 22 *incurred in carrying out that agreement.*

23 **(d) FUNDING.**—***There are authorized to be***
 24 ***appropriated from the National Tobacco Set-***
 25 ***tlement Trust Fund, other than from amounts***

1 *in the State Litigation Settlement Account,*
 2 *such sums as may be necessary to carry out*
 3 *this section.*

4 ***TITLE III—TOBACCO PRODUCT***
 5 ***WARNINGS AND SMOKE CON-***
 6 ***STITUENT DISCLOSURE***

7 ***Subtitle A—Product Warnings,***
 8 ***Labeling and Packaging***

9 ***SEC. 301. CIGARETTE LABEL AND ADVERTISING WARNINGS.***

10 *Section 4 of the Federal Cigarette Labeling and Adver-*
 11 *tising Act (15 U.S.C. 1333) is amended to read as follows:*

12 ***“SEC. 4. LABELING.***

13 ***“(a) LABEL REQUIREMENTS.—***

14 ***“(1) IN GENERAL.—It shall be unlawful for any***
 15 ***person to manufacture, package, or import for sale or***
 16 ***distribution within the United States any cigarettes***
 17 ***the package of which fails to bear, in accordance with***
 18 ***the requirements of this section, one of the following***
 19 ***labels:***

20 ***‘WARNING: Cigarettes are addictive’***

21 ***‘WARNING: Tobacco smoke can harm your children’***

22 ***‘WARNING: Cigarettes cause fatal lung disease’***

23 ***‘WARNING: Cigarettes cause cancer’***

24 ***‘WARNING: Cigarettes cause strokes and heart dis-***
 25 ***ease’***

1 *‘WARNING: Smoking during pregnancy can harm*
 2 *your baby’*

3 *‘WARNING: Smoking can kill you’*

4 *‘WARNING: Tobacco smoke causes fatal lung disease*
 5 *in non-smokers’*

6 *‘WARNING: Quitting smoking now greatly reduces*
 7 *serious risks to your health’*

8 “(2) *PLACEMENT; TYPOGRAPHY; ETC.—*

9 “(A) *IN GENERAL.—Each label statement*
 10 *required by paragraph (1) shall be located in the*
 11 *upper portion of the front and rear panels of the*
 12 *package, directly on the package underneath the*
 13 *cellophane or other clear wrapping. Except as*
 14 *provided in subparagraph (B), each label state-*
 15 *ment shall comprise at least the top 25 percent*
 16 *of the front and rear panels of the package. The*
 17 *word ‘WARNING’ shall appear in capital letters*
 18 *and all text shall be in conspicuous and legible*
 19 *17-point type, unless the text of the label state-*
 20 *ment would occupy more than 70 percent of such*
 21 *area, in which case the text may be in a smaller*
 22 *conspicuous and legible type size, provided that*
 23 *at least 60 percent of such area is occupied by*
 24 *required text. The text shall be black on a white*
 25 *background, or white on a black background, in*

1 *a manner that contrasts, by typography, layout,*
2 *or color, with all other printed material on the*
3 *package, in an alternating fashion under the*
4 *plan submitted under subsection (b)(4).*

5 “(B) *FLIP-TOP BOXES.*—*For any cigarette*
6 *brand package manufactured or distributed be-*
7 *fore January 1, 2000, which employs a flip-top*
8 *style (if such packaging was used for that brand*
9 *in commerce prior to June 21, 1997), the label*
10 *statement required by paragraph (1) shall be lo-*
11 *cated on the flip-top area of the package, even if*
12 *such area is less than 25 percent of the area of*
13 *the front panel. Except as provided in this para-*
14 *graph, the provisions of this subsection shall*
15 *apply to such packages.*

16 “(3) *DOES NOT APPLY TO FOREIGN DISTRIBUTION.*—*The provisions of this subsection do not apply*
17 *to a tobacco product manufacturer or distributor of*
18 *cigarettes which does not manufacture, package, or*
19 *import cigarettes for sale or distribution within the*
20 *United States.*

22 “(b) *ADVERTISING REQUIREMENTS.*—

23 “(1) *IN GENERAL.*—*It shall be unlawful for any*
24 *tobacco product manufacturer, importer, distributor,*
25 *or retailer of cigarettes to advertise or cause to be ad-*

1 *vertised within the United States any cigarette unless*
2 *its advertising bears, in accordance with the require-*
3 *ments of this section, one of the labels specified in*
4 *subsection (a) of this section.*

5 “(2) *TYPOGRAPHY, ETC.—Each label statement*
6 *required by subsection (a) of this section in cigarette*
7 *advertising shall comply with the standards set forth*
8 *in this paragraph. For press and poster advertise-*
9 *ments, each such statement and (where applicable)*
10 *any required statement relating to tar, nicotine, or*
11 *other constituent yield shall comprise 20 percent of*
12 *the area of the advertisement and shall appear in a*
13 *conspicuous and prominent format and location at*
14 *the top of each advertisement within the trim area.*
15 *The Secretary may revise the required type sizes in*
16 *such area in such manner as the Secretary determines*
17 *appropriate. The word ‘WARNING’ shall appear in*
18 *capital letters, and each label statement shall appear*
19 *in conspicuous and legible type. The text of the label*
20 *statement shall be black if the background is white*
21 *and white if the background is black, under the plan*
22 *submitted under paragraph (4) of this subsection. The*
23 *label statements shall be enclosed by a rectangular*
24 *border that is the same color as the letters of the state-*
25 *ments and that is the width of the first downstroke*

1 of the capital ‘W’ of the word ‘WARNING’ in the
 2 label statements. The text of such label statements
 3 shall be in a typeface pro rata to the following re-
 4 quirements: 45-point type for a whole-page broadsheet
 5 newspaper advertisement; 39-point type for a half-
 6 page broadsheet newspaper advertisement; 39-point
 7 type for a whole-page tabloid newspaper advertise-
 8 ment; 27-point type for a half-page tabloid newspaper
 9 advertisement; 31.5-point type for a double page
 10 spread magazine or whole-page magazine advertise-
 11 ment; 22.5-point type for a 28 centimeter by 3 col-
 12 umn advertisement; and 15-point type for a 20 centi-
 13 meter by 2 column advertisement. The label state-
 14 ments shall be in English, except that in the case of—

15 “(A) an advertisement that appears in a
 16 newspaper, magazine, periodical, or other publi-
 17 cation that is not in English, the statements
 18 shall appear in the predominant language of the
 19 publication; and

20 “(B) in the case of any other advertisement
 21 that is not in English, the statements shall ap-
 22 pear in the same language as that principally
 23 used in the advertisement.

24 “(3) ADJUSTMENT BY SECRETARY.—The Sec-
 25 retary may, through a rulemaking under section 553

1 of title 5, United States Code, adjust the format and
2 type sizes for the label statements required by this sec-
3 tion or the text, format, and type sizes of any re-
4 quired tar, nicotine yield, or other constituent disclo-
5 sures, or to establish the text, format, and type sizes
6 for any other disclosures required under the Federal
7 Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.).
8 The text of any such label statements or disclosures
9 shall be required to appear only within the 20 percent
10 area of cigarette advertisements provided by para-
11 graph (2) of this subsection. The Secretary shall pro-
12 mulgate regulations which provide for adjustments in
13 the format and type sizes of any text required to ap-
14 pear in such area to ensure that the total text re-
15 quired to appear by law will fit within such area.

16 “(4) *MARKETING REQUIREMENTS.*—

17 “(A) The label statements specified in sub-
18 section (a)(1) shall be randomly displayed in
19 each 12-month period, in as equal a number of
20 times as is possible on each brand of the product
21 and be randomly distributed in all areas of the
22 United States in which the product is marketed
23 in accordance with a plan submitted by the to-
24 bacco product manufacturer, importer, distribu-
25 tor, or retailer and approved by the Secretary.

1 “(B) *The label statements specified in sub-*
 2 *section (a)(1) shall be rotated quarterly in alter-*
 3 *ating sequence in advertisements for each brand*
 4 *of cigarettes in accordance with a plan submit-*
 5 *ted by the tobacco product manufacturer, im-*
 6 *porter, distributor, or retailer to, and approved*
 7 *by, the Secretary.*

8 “(C) *The Secretary shall review each plan*
 9 *submitted under subparagraph (B) and approve*
 10 *it if the plan—*

11 “(i) *will provide for the equal distribu-*
 12 *tion and display on packaging and the ro-*
 13 *tation required in advertising under this*
 14 *subsection; and*

15 “(ii) *assures that all of the labels re-*
 16 *quired under this section will be displayed*
 17 *by the tobacco product manufacturer, im-*
 18 *porter, distributor, or retailer at the same*
 19 *time.”.*

20 **SEC. 302. AUTHORITY TO REVISE CIGARETTE WARNING**
 21 **LABEL STATEMENTS.**

22 *Section 4 of the Federal Cigarette Labeling and Adver-*
 23 *tising Act (15 U.S.C. 1333), as amended by section 301 of*
 24 *this title, is further amended by adding at the end the fol-*
 25 *lowing:*

1 “(c) *CHANGE IN REQUIRED STATEMENTS.*—The Sec-
 2 retary may, by a rulemaking conducted under section 553
 3 of title 5, United States Code, revise the text of any of the
 4 warning label statements required by subsection (a) of this
 5 section if the Secretary determines that such a change would
 6 promote greater public understanding of the risks associated
 7 with the use of tobacco products.”.

8 **SEC. 303. SMOKELESS TOBACCO LABELS AND ADVERTISING**
 9 **WARNINGS.**

10 Section 3 of the Comprehensive Smokeless Tobacco
 11 Health Education Act of 1986 (15 U.S.C. 4402) is amended
 12 to read as follows:

13 **“SEC. 3. SMOKELESS TOBACCO WARNING.**

14 “(a) *GENERAL RULE.*—

15 “(1) It shall be unlawful for any person to man-
 16 ufacture, package, or import for sale or distribution
 17 within the United States any smokeless tobacco prod-
 18 uct unless the product package bears, in accordance
 19 with the requirements of this Act, one of the following
 20 labels:

21 ‘WARNING: This product can cause mouth cancer’

22 ‘WARNING: This product can cause gum disease and
 23 tooth loss’

24 ‘WARNING: This product is not a safe alternative to
 25 cigarettes’

1 ‘WARNING: Smokeless tobacco is addictive’

2 “(2) Each label statement required by paragraph
3 (1) shall be—

4 “(A) located on the 2 principal display
5 panels of the package, and each label statement
6 shall comprise at least 25 percent of each such
7 display panel; and

8 “(B) in 17-point conspicuous and legible
9 type and in black text on a white background, or
10 white text on a black background, in a manner
11 that contrasts by typography, layout, or color,
12 with all other printed material on the package,
13 in an alternating fashion under the plan submit-
14 ted under subsection (b)(3), except that if the text
15 of a label statement would occupy more than 70
16 percent of the area specified by subparagraph
17 (A), such text may appear in a smaller type size,
18 so long as at least 60 percent of such warning
19 area is occupied by the label statement.

20 “(3) The label statements required by paragraph
21 (1) shall be introduced by each tobacco product manu-
22 facturer, packager, importer, distributor, or retailer of
23 smokeless tobacco products concurrently into the dis-
24 tribution chain of such products.

1 “(4) *The provisions of this subsection do not*
 2 *apply to a tobacco product manufacturer or distribu-*
 3 *tor of any smokeless tobacco product that does not*
 4 *manufacture, package, or import smokeless tobacco*
 5 *products for sale or distribution within the United*
 6 *States.*

7 “(b) *REQUIRED LABELS.—*

8 “(1) *It shall be unlawful for any tobacco product*
 9 *manufacturer, packager, importer, distributor, or re-*
 10 *tailer of smokeless tobacco products to advertise or*
 11 *cause to be advertised within the United States any*
 12 *smokeless tobacco product unless its advertising bears,*
 13 *in accordance with the requirements of this section,*
 14 *one of the labels specified in subsection (a).*

15 “(2) *Each label statement required by subsection*
 16 *(a) in smokeless tobacco advertising shall comply with*
 17 *the standards set forth in this paragraph. For press*
 18 *and poster advertisements, each such statement and*
 19 *(where applicable) any required statement relating to*
 20 *tar, nicotine, or other constituent yield shall—*

21 “(A) *comprise at least 20 percent of the*
 22 *area of the advertisement, and the warning area*
 23 *shall be delineated by a dividing line of contrast-*
 24 *ing color from the advertisement; and*

1 “(B) the word ‘WARNING’ shall appear in
2 capital letters and each label statement shall ap-
3 pear in conspicuous and legible type. The text of
4 the label statement shall be black on a white
5 background, or white on a black background, in
6 an alternating fashion under the plan submitted
7 under paragraph (3).

8 “(3)(A) The label statements specified in sub-
9 section (a)(1) shall be randomly displayed in each 12-
10 month period, in as equal a number of times as is
11 possible on each brand of the product and be ran-
12 domly distributed in all areas of the United States in
13 which the product is marketed in accordance with a
14 plan submitted by the tobacco product manufacturer,
15 importer, distributor, or retailer and approved by the
16 Secretary.

17 “(B) The label statements specified in subsection
18 (a)(1) shall be rotated quarterly in alternating se-
19 quence in advertisements for each brand of smokeless
20 tobacco product in accordance with a plan submitted
21 by the tobacco product manufacturer, importer, dis-
22 tributor, or retailer to, and approved by, the Sec-
23 retary.

1 “(C) *The Secretary shall review each plan sub-*
 2 *mitted under subparagraph (B) and approve it if the*
 3 *plan—*

4 “(i) *will provide for the equal distribution*
 5 *and display on packaging and the rotation re-*
 6 *quired in advertising under this subsection; and*

7 “(ii) *assures that all of the labels required*
 8 *under this section will be displayed by the to-*
 9 *bacco product manufacturer, importer, distribu-*
 10 *tor, or retailer at the same time.”.*

11 **SEC. 304. AUTHORITY TO REVISE SMOKELESS TOBACCO**
 12 **PRODUCT WARNING LABEL STATEMENTS.**

13 *Section 3 of the Comprehensive Smokeless Tobacco*
 14 *Health Education Act of 1986 (15 U.S.C. 4402), as amend-*
 15 *ed by section 303 of this title, is further amended by adding*
 16 *at the end the following:*

17 “(c) **AUTHORITY TO REVISE WARNING LABEL STATE-**
 18 **MENTS.**—*The Secretary may, by a rulemaking conducted*
 19 *under section 553 of title 5, United States Code, adjust the*
 20 *format, type size, and text of any of the warning label state-*
 21 *ments required by subsection (a) of this section, or establish*
 22 *the format, type size, and text of any other disclosures re-*
 23 *quired under the Federal Food, Drug, and Cosmetic Act (21*
 24 *U.S.C. 301 et seq.), if the Secretary finds that such a change*

1 *would promote greater public understanding of the risks as-*
 2 *sociated with the use of smokeless tobacco products.”.*

3 **SEC. 305. TAR, NICOTINE, AND OTHER SMOKE CONSTITU-**
 4 **ENT DISCLOSURE TO THE PUBLIC.**

5 *Section 4(a) of the Federal Cigarette Labeling and Ad-*
 6 *vertising Act (15 U.S.C. 1333 (a)), as amended by section*
 7 *301 of this title, is further amended by adding at the end*
 8 *the following:*

9 *“(4)(A) The Secretary shall, by a rulemaking*
 10 *conducted under section 553 of title 5, United States*
 11 *Code, determine (in the Secretary’s sole discretion)*
 12 *whether cigarette and other tobacco product manufac-*
 13 *turers shall be required to include in the area of each*
 14 *cigarette advertisement specified by subsection (b) of*
 15 *this section, or on the package label, or both, the tar*
 16 *and nicotine yields of the advertised or packaged*
 17 *brand. Any such disclosure shall be in accordance*
 18 *with the methodology established under such regula-*
 19 *tions, shall conform to the type size requirements of*
 20 *subsection (b) of this section, and shall appear within*
 21 *the area specified in subsection (b) of this section.*

22 *“(B) Any differences between the requirements*
 23 *established by the Secretary under subparagraph (A)*
 24 *and tar and nicotine yield reporting requirements es-*
 25 *tablished by the Federal Trade Commission shall be*

1 *resolved by a memorandum of understanding between*
2 *the Secretary and the Federal Trade Commission.*

3 “(C) *In addition to the disclosures required by*
4 *subparagraph (A) of this paragraph, the Secretary*
5 *may, under a rulemaking conducted under section*
6 *553 of title 5, United States Code, prescribe disclosure*
7 *requirements regarding the level of any cigarette or*
8 *other tobacco product smoke constituent. Any such*
9 *disclosure may be required if the Secretary determines*
10 *that disclosure would be of benefit to the public*
11 *health, or otherwise would increase consumer aware-*
12 *ness of the health consequences of the use of tobacco*
13 *products, except that no such prescribed disclosure*
14 *shall be required on the face of any cigarette package*
15 *or advertisement. Nothing in this section shall pro-*
16 *hibit the Secretary from requiring such prescribed*
17 *disclosure through a cigarette or other tobacco product*
18 *package or advertisement insert, or by any other*
19 *means under the Federal Food, Drug, and Cosmetic*
20 *Act (21 U.S.C. 301 et seq.).”.*

1 ***Subtitle B—Testing and Reporting***
2 ***of Tobacco Product Smoke Con-***
3 ***stituents***

4 ***SEC. 311. REGULATION REQUIREMENT.***

5 (a) *TESTING, REPORTING, AND DISCLOSURE.*—Not
6 later than 24 months after the date of enactment of this
7 Act, the Secretary, through the Commissioner of the Food
8 and Drug Administration, shall promulgate regulations
9 under the Federal Food, Drug, and Cosmetic Act (21 U.S.C.
10 301 et seq.) that meet the requirements of subsection (b) of
11 this section.

12 (b) *CONTENTS OF RULES.*—The rules promulgated
13 under subsection (a) of this section shall require the testing,
14 reporting, and disclosure of tobacco product smoke constitu-
15 ents and ingredients that the Secretary determines should
16 be disclosed to the public in order to protect the public
17 health. Such constituents shall include tar, nicotine, carbon
18 monoxide, and such other smoke constituents or ingredients
19 as the Secretary may determine to be appropriate. The rule
20 may require that tobacco product manufacturers, packagers,
21 or importers make such disclosures relating to tar and nico-
22 tine through labels or advertising, and make such disclo-
23 sures regarding other smoke constituents or ingredients as
24 the Secretary determines are necessary to protect the public
25 health.

1 (c) *AUTHORITY.*—*The Food and Drug Administration*
 2 *shall have authority to conduct or to require the testing,*
 3 *reporting, or disclosure of tobacco product smoke constitu-*
 4 *ents.*

5 ***TITLE IV—NATIONAL TOBACCO***
 6 ***SETTLEMENT TRUST FUND***
 7 ***[Subtitle A—General Payment***
 8 ***Provisions***

9 ***[SEC. 401. ESTABLISHMENT OF TRUST FUND.***

10 ***[(a) CREATION.—***

11 ***[(1) IN GENERAL.—****There is established in the*
 12 *Treasury of the United States a trust fund to be*
 13 *known as the “National Tobacco Settlement Trust*
 14 *Fund”, consisting of such amounts as may be appro-*
 15 *priated or credited to the trust fund.*

16 ***[(b) TRANSFERS TO NATIONAL TOBACCO SETTLE-***
 17 *MENT TRUST FUND.—**There shall be credited to the trust*
 18 *fund the following amounts:*

19 ***[(1) Amounts paid under section 403.***

20 ***[(2) Amounts equivalent to the fines or penalties***
 21 *paid under section 403, 404, or 406, including inter-*
 22 *est thereon.*

23 ***[(3) Amounts equivalent to penalties paid under***
 24 *section 202, including interest thereon.*

25 ***[(c) REPAYABLE ADVANCES.—***

1 **[(1) AUTHORIZATION.**—*There are authorized to*
 2 *be appropriated to the trust fund, as repayable ad-*
 3 *vances, such sums as may from time to time be nec-*
 4 *essary to make the expenditures authorized by this*
 5 *Act.*

6 **[(2) REPAYMENT WITH INTEREST.**—*Repayable*
 7 *advances made to the trust fund shall be repaid, and*
 8 *interest on such advances shall be paid, to the general*
 9 *fund of the Treasury when the Secretary of the Treas-*
 10 *ury determines that moneys are available in the trust*
 11 *fund for such purposes.*

12 **[(3) RATE OF INTEREST.**—*Interest on advances*
 13 *made under this subsection shall be at a rate deter-*
 14 *mined by the Secretary of the Treasury (as of the*
 15 *close of the calendar month preceding the month in*
 16 *which the advance is made) to be equal to the current*
 17 *average market yield on outstanding marketable obli-*
 18 *gations of the United States with remaining period to*
 19 *maturity comparable to the anticipated period during*
 20 *which the advance will be outstanding.*

21 **[(d) EXPENDITURES FROM TRUST FUND.**—*Amounts*
 22 *in the trust fund shall be available in each calendar year,*
 23 *as provided by appropriations Acts, except that distribu-*
 24 *tions to the States from amounts credited to the State Liti-*
 25 *gation Settlement Account shall not require further author-*

1 ization or appropriation and shall be as provided in the
 2 Master Settlement Agreement and this Act, and not less
 3 than 15 percent of the amounts shall be expended, without
 4 further appropriation, notwithstanding any other provision
 5 of this Act, from the trust fund for each fiscal year, in the
 6 aggregate, for activities under this Act related to—

7 **[(1)** the prevention of smoking;

8 **[(2)** education;

9 **[(3)** State, local, and private control of tobacco
 10 product use; and

11 **[(4)** smoking cessation.

12 **[(e) BUDGETARY TREATMENT OF TRUST FUND OPER-**
 13 **ATIONS.**—*The receipts and disbursements of the National*
 14 *Tobacco Settlement Trust Fund shall not be included in the*
 15 *totals of the budget of the United States Government as sub-*
 16 *mitted by the President or of the congressional budget and*
 17 *shall be exempt from any general budget limitation imposed*
 18 *by statute on expenditures and net lending (budget outlays)*
 19 *of the United States Government.*

20 **[(f) ADMINISTRATIVE PROVISIONS.**—*Section 9602 of*
 21 *the Internal Revenue Code of 1986 shall apply to the trust*
 22 *fund to the same extent as if it were established by sub-*
 23 *chapter A of chapter 95 of such Code.*

1 **【SEC. 402. STATE LITIGATION SETTLEMENT ACCOUNT.**

2 **【(a) IN GENERAL.**—*There is established within the*
 3 *trust fund a separate account, to be known as the State*
 4 *Litigation Settlement Account.*

5 **【(b) TRANSFERS TO ACCOUNT.**—*From amounts re-*
 6 *ceived by the trust fund under section 403, the State Litiga-*
 7 *tion Settlement Account shall be credited with all settlement*
 8 *payments designated for allocation, without further appro-*
 9 *priation, among the several States, which shall consist of—*

10 **【(1)** *the sum of \$196,500,000,000, to be paid in*
 11 *installments over a period of 25 years; and*

12 **【(2)** *beginning after the last installment under*
 13 *paragraph (1), 50 percent of the total annual pay-*
 14 *ments made by participating tobacco product manu-*
 15 *facturers under section 403(b) each year thereafter.*

16 **【(c) REIMBURSEMENT FOR STATE EXPENDITURES.**—

17 **【(1) PAYMENT.**—*Amounts credited to the ac-*
 18 *count are available, without further appropriation, in*
 19 *each fiscal year to provide funds to each State to re-*
 20 *imburse such State for amounts expended by the State*
 21 *for the treatment of individuals with tobacco-related*
 22 *illnesses or conditions.*

23 **【(2) AMOUNT.**—*The amount for which a State is*
 24 *eligible for under subparagraph (A) for a fiscal year*
 25 *shall be based on the Master Settlement Agreement*
 26 *and its ancillary documents in accordance with such*

1 *agreements thereunder as may be entered into after*
 2 *the date of enactment of this Act by the governors of*
 3 *the several States.*

4 **[(3) USE OF FUNDS.—***A State may use amounts*
 5 *received under this subsection as the State determines*
 6 *appropriate.*

7 **[(4) FUNDS NOT AVAILABLE AS MEDICAID REIM-**
 8 *BURSEMENT.—Funds in the account shall not be*
 9 *available to the Secretary as reimbursement of Medic-*
 10 *aid expenditures or considered as Medicaid overpay-*
 11 *ments for purposes of recoupment.*

12 **[(d) PAYMENTS TO BE TRANSFERRED PROMPTLY TO**
 13 *STATES.—The Secretary of the Treasury shall transfer*
 14 *amounts available under subsection (c) to each State as*
 15 *amounts are credited to the State Litigation Settlement Ac-*
 16 *count without undue delay.*

17 **[SEC. 403. PAYMENTS BY INDUSTRY.**

18 **[(a) INITIAL PAYMENT.—**

19 **[(1) CERTAIN PARTICIPATING TOBACCO PROD-**
 20 *UCT MANUFACTURERS.—The following participating*
 21 *tobacco product manufacturers shall deposit into the*
 22 *National Tobacco Settlement Trust Fund an aggre-*
 23 *gate payment of \$10,000,000,000, apportioned as fol-*
 24 *lows:*

1 **[(A)** *Phillip Morris Incorporated*—65.8
2 *percent;*

3 **[(B)** *Brown and Williamson Tobacco Cor-*
4 *poration*—17.3 *percent;*

5 **[(C)** *Lorillard Tobacco Company*—7.1 *per-*
6 *cent;*

7 **[(D)** *R.J. Reynolds Tobacco Company*—6.6
8 *percent; and*

9 **[(E)** *United States Tobacco Company*—3.2
10 *percent.*

11 **[(2)** *NO CONTRIBUTION FROM OTHER PARTICI-*
12 *PATING TOBACCO PRODUCT MANUFACTURERS.—No*
13 *other participating tobacco product manufacturer*
14 *shall be required to contribute to the payment re-*
15 *quired by this subsection.*

16 **[(3)** *PAYMENT DATE; INTEREST.—Each partici-*
17 *parting tobacco product manufacturer required to*
18 *make a payment under paragraph (1) of this sub-*
19 *section shall make such payment within 30 days after*
20 *the date of enactment of this Act in accordance with*
21 *the terms of the Master Settlement Agreement and*
22 *shall owe interest on such payment at the prime rate*
23 *plus 10 percent, as published in the Wall Street Jour-*
24 *nal on the latest publication date on or before the date*

1 of enactment of this Act, for payments made after the
2 required payment date.

3 **[(b) ANNUAL PAYMENTS.—***Each calendar year begin-*
4 *ning after the required payment date under subsection*
5 *(a)(3) the participating tobacco product manufacturers*
6 *shall make total payments into the Fund for each calendar*
7 *year in the following applicable base amounts, subject to*
8 *adjustment as provided in section 404:*

9 **[(1) year 1—**\$14,400,000,000;

10 **[(2) year 2—**\$15,400,000,000;

11 **[(3) year 3—**\$17,700,000,000;

12 **[(4) year 4—**\$21,000,000,000;

13 **[(5) year 5—**\$23,600,000,000; and

14 **[(6) year 6 and thereafter—the adjusted appli-**
15 *cable base amount under section 404.*

16 **[(c) PAYMENT SCHEDULE.—***Each annual payment*
17 *due under subsection (b) shall be made in 3 equal install-*
18 *ments due on March 1st, on June 1st, and on September*
19 *1st of each year.*

20 **[(d) APPORTIONMENT OF ANNUAL PAYMENT.—**

21 **[(1) IN GENERAL.—***Each participating tobacco*
22 *product manufacturer is liable for its share of the ap-*
23 *plicable base amount payment due each year under*
24 *subsection (b). Any separate collection of these pay-*
25 *ments among such participating tobacco product*

1 *manufacturers shall be set forth in accordance with*
 2 *an appendix to the Protocol. The annual payment is*
 3 *the obligation and responsibility of only those partici-*
 4 *parting tobacco product manufacturers and their af-*
 5 *filiates that directly sell tobacco products in the do-*
 6 *mestic market to wholesalers, retailers, or consumers,*
 7 *their successors and assigns, and any subsequent*
 8 *fraudulent transferee (but only to the extent of the in-*
 9 *terest or obligation fraudulently transferred).*

10 **[(2) DETERMINATION OF AMOUNT OF PAYMENT**
 11 *DUE.—Each participating tobacco product manufac-*
 12 *turer is liable for its share of each installment in pro-*
 13 *portion to its share of tobacco products sold in the do-*
 14 *mestic market for the most recent available calendar*
 15 *quarter, as determined by the Secretary of the Treas-*
 16 *ury not more than 2 months, and not less than 1*
 17 *month, before the payment is due. One month before*
 18 *each payment is due under this subsection, the Sec-*
 19 *retary shall make a final determination of each to-*
 20 *bacco product manufacturer's applicable base amount*
 21 *payment obligation.*

22 **[(3) CALCULATION OF PARTICIPATING TOBACCO**
 23 *PRODUCT MANUFACTURER'S SHARE OF ANNUAL PAY-*
 24 *MENT.—The share of the annual payment appor-*
 25 *tioned to a participating tobacco product manufac-*

turer shall be equal to that manufacturer's share of adjusted units. A participating tobacco product manufacturer's share of adjusted units shall be determined as follows:

[(A) UNITS.—A participating tobacco product manufacturer's number of units shall be determined by counting each—

[(i) pack of 20 cigarettes as 1 adjusted unit;

[(ii) 1.2 ounces of moist snuff as 0.4 adjusted unit; and

[(iii) 3 ounces of other smokeless tobacco product as 0.24 adjusted units.

[(B) DETERMINATION OF ADJUSTED UNITS.—Except as provided in subparagraph (C), a participating tobacco product manufacturer's number of adjusted units shall be determined under the following table:

<i>For units:</i>	<i>Each unit shall be treated as:</i>
<i>Not exceeding 150 million</i>	<i>25% of a unit</i>
<i>Exceeding 150 million, but not exceeding 300 million</i>	<i>50% of a unit</i>
<i>Exceeding 300 million</i>	<i>1 unit</i>

[(C) SPECIAL RULE FOR LARGE MANUFACTURERS.—If a participating tobacco product manufacturer has more than 500 million units under subparagraph (A), then that manufactur-

1 *er's number of adjusted units shall be equal to*
 2 *the total number of units, and not determined*
 3 *under subparagraph (B).*

4 **[(e) COMPUTATIONS.**—*The determinations required by*
 5 *subsection (d) shall be made and certified by the Secretary*
 6 *of Treasury. The parties shall promptly provide the Treas-*
 7 *ury Department with information sufficient for it to make*
 8 *such determinations.*

9 **[(f) NONAPPLICATION TO CERTAIN MANUFACTUR-**
 10 **ERS.**—

11 **[(1) EXEMPTION.**—*A participating manufac-*
 12 *turer described in paragraph (3) is exempt from the*
 13 *payments required by subsection (b).*

14 **[(2) LIMITATION.**—*Paragraph (1) applies only*
 15 *to assessments on cigarettes to the extent that those*
 16 *cigarettes constitute less than 3 percent of all ciga-*
 17 *rettes manufactured and distributed to consumers in*
 18 *any calendar year.*

19 **[(3) PARTICIPATING TOBACCO PRODUCT MANU-**
 20 **FACTURERS TO WHICH SUBSECTION APPLIES.**—*A par-*
 21 *ticipating tobacco product manufacturer is described*
 22 *in this paragraph if it—*

23 **[(A)** *resolved tobacco-related civil actions*
 24 *with more than 25 States before January 1,*
 25 *1998, through written settlement agreements*

1 *signed by the attorneys general (or the equivalent*
 2 *chief legal officer if there is no office of attorney*
 3 *general) of those States; and*

4 **[(B)** *provides to all other States, not later*
 5 *than December 31, 1998, the opportunity to*
 6 *enter into written settlement agreements that—*

7 **[(i)** *are substantially similar to the*
 8 *agreements entered into with those 25*
 9 *States; and*

10 **[(ii)** *provide the other States with an-*
 11 *ual payment terms that are equivalent to*
 12 *the most favorable annual payment terms of*
 13 *its written settlement agreements with those*
 14 *25 States.*

15 **[SEC. 404. ADJUSTMENTS.**

16 **[The** *applicable base amount under section 403(b) for*
 17 *a given calendar year shall be adjusted as follows in deter-*
 18 *mining the annual payment for that year:*

19 **[(1) INFLATION ADJUSTMENT.—**

20 **[(A) IN GENERAL.—***Beginning with the*
 21 *fourth calendar year after the date of enactment*
 22 *of this Act, the adjusted applicable base amount*
 23 *under section 403(b)(6) is the amount of the an-*
 24 *nuual payment made for the preceding year in-*
 25 *creased by the greater of 3 percent or the infla-*

tion adjustment, adjusted (for calendar year 2005 and later years) by the volume adjustment under paragraph (2).

[(B) INFLATION ADJUSTMENT.—For purposes of subparagraph (A), the inflation adjustment for any calendar year is the percentage (if any) by which—

[(i) the CPI for the preceding calendar year, exceeds

[(ii) the CPI for the second preceding calendar year.

[(C) CPI.—For purposes of subparagraph (B), the CPI for any calendar year is the average of the Consumer Price Index for all-urban consumers published by the Department of Labor.

[(D) ROUNDING.—If any increase determined under subparagraph (A) is not a multiple of \$1,000, the increase shall be rounded to the nearest multiple of \$1,000.

[(2) VOLUME ADJUSTMENT.—Beginning with calendar year 2005, the applicable base amount (as adjusted for inflation under paragraph (1)) shall be adjusted for changes in volume of domestic sales by multiplying the applicable base amount by the ratio

10 **[(a) TARGET PRICE.**—Each participating tobacco
11 product manufacturer shall use its best efforts to adjust the
12 price at which it sells each unit of tobacco products in the
13 domestic market or to an importer for resale in the domestic
14 market by an amount sufficient to pass through to each
15 purchaser on a per-unit basis an equal share of the annual
16 payments to be made by such participating tobacco product
17 manufacturer under this Act and the Master Settlement
18 agreement for the year in which the sale occurs.

20 **[(1) IN GENERAL.—***If the Secretary determines*
21 *that a participating tobacco product manufacturer*
22 *failed to comply with subsection (a), the Secretary*
23 *shall assess a penalty against that manufacturer in*
24 *an amount equal to—*

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1 **[(B)** *if the failure to comply with sub-*
 2 *section (a) was intentional, up to 125 percent of*
 3 *the shortfall amount.*

4 **[(2)** *SHORTFALL AMOUNT.—For purposes of*
 5 *paragraph (1), the term “shortfall amount” means—*

6 **[(A)** *the number of units of tobacco prod-*
 7 *ucts sold by a tobacco product manufacturer dur-*
 8 *ing a calendar year, multiplied by—*

9 **[(B)** *the excess of—*

10 **[(i)** *the average adjusted price for*
 11 *which each such unit would have been sold*
 12 *during that year if the tobacco product*
 13 *manufacturer had met the price con-*
 14 *templated by subsection (a); over*

15 **[(ii)** *the average adjusted price for*
 16 *which each such unit was sold during that*
 17 *year.*

18 **[(3)** *SOLE REMEDY FOR FAILURE TO PASS PAY-*
 19 *MENT THROUGH TO CONSUMERS.—This subsection is*
 20 *the sole remedy available to any person, including*
 21 *any State, for the failure by a participating tobacco*
 22 *product manufacturer to pass through the payments*
 23 *under section 403 to consumers as required by sub-*
 24 *section (a).*

1 **[SEC. 406. TAX TREATMENT OF PAYMENTS.**

2 *【All payments made under section 403 are ordinary*
 3 *and necessary business expenses for purposes of chapter 1*
 4 *of the Internal Revenue Code of 1986, and no part thereof*
 5 *is either in settlement of an actual or potential liability*
 6 *for a fine or penalty (civil or criminal) or the cost of a*
 7 *tangible or intangible asset or other future benefit.*

8 **[SEC. 407. ENFORCEMENT FOR NONPAYMENT.**

9 *【(a) PENALTY.—Any participating tobacco product*
 10 *manufacturer that fails to make any payment required*
 11 *under section 403 or 405 within 60 days after the date on*
 12 *which such fee is due is liable for a civil penalty of \$100,000*
 13 *for each day during the noncompliance period.*

14 *【(b) NONCOMPLIANCE PERIOD.—For purposes of this*
 15 *section, the term “noncompliance period” means, with re-*
 16 *spect to any failure to make a payment required under sec-*
 17 *tion 403 or 405, the period—*

18 *【(1) beginning on the due date for such pay-*
 19 *ment; and*

20 *【(2) ending on the date on which such payment*
 21 *is paid in full.*

22 **[(c) LIMITATIONS.—**

23 *【(1) IN GENERAL.—No penalty shall be imposed*
 24 *by subsection (a) on any failure to make a payment*
 25 *under section 403 during any period for which it is*
 26 *established to the satisfaction of the Secretary of the*

1 *Treasury that none of the persons responsible for such*
 2 *failure knew or, exercising reasonable diligence,*
 3 *should have known, that such failure existed.*

4 **[(2) CORRECTIONS.**—*No penalty shall be im-*
 5 *posed under subsection (a) on any failure to make a*
 6 *payment under section 403 if—and*

7 **[(B)** *such failure is corrected during the*
 8 *30-day period beginning on the 1st date that any*
 9 *of the persons responsible for such failure knew*
 10 *or, exercising reasonable diligence, should have*
 11 *known, that such failure existed.*

12 **[(3) WAIVER.**—*In the case of any failure to*
 13 *make a payment under section 403 that is due to rea-*
 14 *sonable cause and not to willful neglect, the Secretary*
 15 *of the Treasury may waive all or part of the penalty*
 16 *imposed under subsection (a) to the extent that the*
 17 *Secretary determines that the payment of such pen-*
 18 *alty would be excessive relative to the failure involved.*

19 **[(d) STATUS AS PARTICIPATING TOBACCO PRODUCT**
 20 **MANUFACTURER.**—*If, at the end of the 1-year period begin-*
 21 *ning on the date on which a participating tobacco product*
 22 *manufacturer fails to make a timely payment as required*
 23 *under section 403, such manufacture has not fully paid the*
 24 *amount owed by such manufacturer under such section,*
 25 *such manufacturer shall be considered a nonparticipating*

1 tobacco product manufacturer and shall not be eligible for
 2 any protections or assistance provided for under this Act.】

3 **Subtitle B—General Spending**
 4 **Provisions**

5 **SEC. 411. IMPLEMENTING AND ENFORCEMENT FUNDS.**

6 【Notwithstanding section 401(d), not less than
 7 \$300,000,000 of the amounts available in the trust fund,
 8 other than in the State Litigation Settlement Account, shall
 9 be made available for each fiscal year without further ap-
 10 propriation to】 **Subject to the availability of ap-**
 11 **propriations, the Secretary shall make pay-**
 12 **ments from amounts in the National Tobacco**
 13 **Settlement Trust Fund, other than in the State**
 14 **Litigation Settlement Account, to** the Commis-
 15 sioner of Food and Drugs as reimbursement for the costs
 16 incurred by the Food and Drug Administration in imple-
 17 menting and enforcing requirements relating to tobacco
 18 products. In order to ensure that the amounts provided by
 19 this section are used for the purposes for which they are
 20 made available, the Commissioner shall submit an account
 21 of such costs for each fiscal year to the Secretary of the
 22 Treasury, in such detail as the Secretary may require, with-
 23 in 60 days after the close of the fiscal year and transmit
 24 a copy of the report to the Congress at the same time as
 25 it is submitted to the Secretary.

1 **[SEC. 412. IMPROVING CHILD CARE AND EARLY CHILD-**
2 **HOOD DEVELOPMENT.**

3 **[(a) IN GENERAL.—***The Secretary of the Treasury*
4 *may transfer funds from the National Tobacco Settlement*
5 *Trust Fund for each fiscal year to be used by the Secretary*
6 *for the following purposes:*

7 **[(1) Improving the affordability of child care**
8 *through increased appropriations for child care under*
9 *the Child Care and Development Block Grant Act of*
10 *1990 (42 U.S.C. 9859 et seq.).*

11 **[(2) Enhancing the quality of child care and**
12 *early childhood development through the provision of*
13 *grants to States under the Child Care and Develop-*
14 *ment Block Grant Act of 1990 (42 U.S.C. 9859 et*
15 *seq.).*

16 **[(3) Expanding the availability and quality of**
17 *school-age care through the provision of grants to*
18 *States under the Child Care and Development Block*
19 *Grant Act of 1990 (42 U.S.C. 9859 et seq.).*

20 **[(4) Assisting young children by providing**
21 *grants to local collaboratives under the Child Care*
22 *and Development Block Grant Act of 1990 (42 U.S.C.*
23 *9859 et seq.) for the purpose of improving parent edu-*
24 *cation and supportive services, strengthening the*
25 *quality of child care, improving health services, and*
26 *improving services for children with disabilities.*

1 **[(b) SUPPLEMENT NOT SUPPLANT.**—*Amounts made*
 2 *available to a State under this section shall be used to sup-*
 3 *plement and not supplant other Federal, State, and local*
 4 *funds provided for programs that serve the health and devel-*
 5 *opmental needs of children. Amounts provided to the State*
 6 *under any of the provisions of law referred to in this section*
 7 *shall not be reduced solely as a result of the availability*
 8 *of funds under this section.*

9 **[(c) AUTHORIZATION OF APPROPRIATIONS.**—*There*
 10 *are authorized to be appropriated from the trust fund estab-*
 11 *lished by section 401, other than from amounts in the State*
 12 *Litigation Settlement Account, such sums as are necessary*
 13 *to carry out this section.]*

14 **TITLE V—STANDARDS TO RE-**
 15 **DUCE INVOLUNTARY EXPO-**
 16 **SURE TO TOBACCO SMOKE**

17 **SEC. 501. DEFINITIONS.**

18 *In this title:*

19 (1) **ASSISTANT SECRETARY.**—*The term “Assist-*
 20 *ant Secretary” means the Assistant Secretary of the*
 21 *Occupational Safety and Health Administration of*
 22 *the Department of Labor.*

23 (2) **PUBLIC FACILITY.**—

24 (A) **IN GENERAL.**—*The term “public facil-*
 25 *ity” means any building used for purposes that*

1 *affect interstate or foreign commerce that is regu-*
2 *larly entered by 10 or more individuals at least*
3 *1 day per week including any building owned by*
4 *or leased to an agency, independent establish-*
5 *ment, department, or branch of the United States*
6 *Government.*

7 (B) *EXCLUSIONS.*—*The term “public facil-*
8 *ity” does not include a building or portion there-*
9 *of which is used for residential purposes or as a*
10 *restaurant (other than a fast food restaurant),*
11 *bar, private club, hotel guest room or common*
12 *area, casino, bingo parlor, tobacconist’s shop, or*
13 *prison.*

14 (C) *FAST FOOD RESTAURANT.*—*The term*
15 *“fast food restaurant” means any restaurant or*
16 *chain of restaurants that primarily distributes*
17 *food through a customer pick-up (either at a*
18 *counter or drive-through window). The Assistant*
19 *Secretary may promulgate regulations to clarify*
20 *this subparagraph to ensure that the intended*
21 *inclusion of establishments catering to individ-*
22 *uals under 18 years of age is achieved.*

23 (3) *RESPONSIBLE ENTITY.*—*The term “respon-*
24 *sible entity” means, with respect to any public facil-*
25 *ity, the owner of such facility except that, in the case*

1 *of any such facility or portion thereof which is leased,*
 2 *such term means the lessee.*

3 **SEC. 502. SMOKE-FREE ENVIRONMENT POLICY.**

4 *(a) POLICY REQUIRED.—In order to protect children*
 5 *and adults from cancer, respiratory disease, heart disease,*
 6 *and other adverse health effects from breathing environ-*
 7 *mental tobacco smoke, the responsible entity for each public*
 8 *facility shall adopt and implement at such facility a smoke-*
 9 *free environment policy which meets the requirements of*
 10 *subsection (b).*

11 *(b) ELEMENTS OF POLICY.—*

12 *(1) IN GENERAL.—The responsible entity for a*
 13 *public facility shall—*

14 *(A) prohibit the smoking of cigarettes, ci-*
 15 *gars, and pipes, and any other combustion of to-*
 16 *bacco within the facility and on facility property*
 17 *within the immediate vicinity of the entrance to*
 18 *the facility; and*

19 *(B) post a clear and prominent notice of the*
 20 *smoking prohibition in appropriate and visible*
 21 *locations at the public facility.*

22 *(2) EXCEPTION.—The responsible entity for a*
 23 *public facility may provide an exception to the prohi-*
 24 *bition specified in paragraph (1) for 1 or more spe-*
 25 *cially designated smoking areas within a public facil-*

1 *ity if such area or areas meet the requirements of sub-*
 2 *section (c).*

3 *(c) SPECIALLY DESIGNATED SMOKING AREAS.—A spe-*
 4 *cially designated smoking area meets the requirements of*
 5 *this subsection if—*

6 *(1) the area is ventilated in accordance with*
 7 *specifications promulgated by the Assistant Secretary*
 8 *that ensure that air from the area is directly ex-*
 9 *hausted to the outside and does not recirculate or*
 10 *drift to other areas within the public facility;*

11 *(2) the area is maintained at negative pressure,*
 12 *as compared to adjoining nonsmoking areas, as deter-*
 13 *mined under regulations promulgated by the Assist-*
 14 *ant Secretary;*

15 *(3) nonsmoking individuals do not have to enter*
 16 *the area for any purpose while smoking is occurring*
 17 *in such area; and*

18 *(4) cleaning and maintenance work are con-*
 19 *ducted in such area only when no smoking is occur-*
 20 *ring in the area.*

21 **SEC. 503. CITIZEN ACTIONS.**

22 *(a) IN GENERAL.—An action may be brought to en-*
 23 *force the requirements of this title by any aggrieved person,*
 24 *any State or local government agency, or the Assistant Sec-*
 25 *retary.*

1 (b) *VENUE.*—Any action to enforce this title may be
2 brought in any United States district court for the district
3 in which the defendant resides or is doing business to enjoin
4 any violation of this title or to impose a civil penalty for
5 any such violation in the amount of not more than \$5,000
6 per day of violation. The district courts shall have jurisdic-
7 tion, without regard to the amount in controversy or the
8 citizenship of the parties, to enforce this title and to impose
9 civil penalties under this title.

10 (c) *NOTICE.*—An aggrieved person shall give any al-
11 leged violator notice at least 60 days prior to commencing
12 an action under this section. No action may be commenced
13 by an aggrieved person under this section if such alleged
14 violator complies with the requirements of this title within
15 such 60-day period and thereafter.

16 (d) *COSTS.*—The court, in issuing any final order in
17 any action brought under this section, may award costs of
18 litigation (including reasonable attorney and expert witness
19 fees) to any prevailing plaintiff, whenever the court deter-
20 mines such award is appropriate.

21 (e) *PENALTIES.*—The court, in any action under this
22 section to apply civil penalties, shall have discretion to
23 order that such civil penalties be used for projects which
24 further the policies of this title. The court shall obtain the

1 *view of the Assistant Secretary in exercising such discretion*
2 *and selecting any such projects.*

3 **SEC. 504. PREEMPTION.**

4 *Nothing in this title shall preempt or otherwise affect*
5 *any other Federal, State, or local law which provides great-*
6 *er protection from health hazards from environmental to-*
7 *bacco smoke.*

8 **SEC. 505. REGULATIONS.**

9 *The Assistant Secretary is authorized to promulgate*
10 *such regulations as the Assistant Secretary deems necessary*
11 *to carry out this title.*

12 **SEC. 506. EFFECTIVE DATE.**

13 *Except as provided in section 507, the provisions of*
14 *this title shall take effect on the first day of January next*
15 *following the next regularly scheduled meeting of the State*
16 *legislature occurring after the date of enactment of this Act*
17 *at which, under the procedural rules of that legislature, a*
18 *measure under section 507 may be considered.*

19 **SEC. 507. STATE CHOICE.**

20 *This title shall not apply to any State that, by law,*
21 *provides that it shall not apply to that State.*

**TITLE VI—APPLICATION TO
INDIAN TRIBES.**

SEC. 601. SHORT TITLE.

This title may be cited as the “Reduction in Tobacco Use and Regulation of Tobacco Products in Indian Country Act of 1998”.

SEC. 602. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that Native Americans have used tobacco products for recreational, ceremonial, and traditional purposes for centuries.

(b) PURPOSES.—It is the purpose of this title to—

(1) provide for the implementation of the National Tobacco Policy and Youth Smoking Reduction Act with respect to the regulation of tobacco products and other tobacco-related activities on Indian lands;

(2) recognize the historic Native American traditional and ceremonial use of tobacco products, and to preserve and protect the cultural, religious, and ceremonial uses of tobacco by members of Indian tribes;

(3) recognize and respect Indian tribal sovereignty and tribal authority to make and enforce laws regarding the regulation of tobacco distributors and tobacco products on Indian lands; and

(4) ensure that the necessary funding is made available to tribal governments for licensing and en-

1 *forcement of tobacco distributors and tobacco products*
2 *on Indian lands.*

3 **SEC. 603. APPLICATION OF TOBACCO-RELATED PROVISIONS**
4 **TO NATIVE AMERICANS.**

5 (a) *IN GENERAL.*—*The provisions of this Act apply*
6 *to the manufacture, distribution, or sale of tobacco or to-*
7 *bacco products in Indian country and on other trust lands*
8 *subject to the jurisdiction of an Indian tribe. To the extent*
9 *that an Indian tribe engages in the manufacture, distribu-*
10 *tion, or sale of tobacco products, the provisions of this Act*
11 *apply to that tribe.*

12 (b) *TRADITIONAL USE EXCEPTION.*—

13 (1) *IN GENERAL.*—*In recognition of the religious,*
14 *ceremonial, and traditional uses of tobacco and to-*
15 *bacco products by Indian tribes and the members of*
16 *such tribes, nothing in this Act shall be construed to*
17 *infringe upon the right of such tribes or members of*
18 *such tribes to acquire, possess, use, or transfer any to-*
19 *bacco or tobacco products for such purposes, or to per-*
20 *mit an infringement upon the ability of minors to*
21 *participate and use tobacco products for religious,*
22 *ceremonial, or traditional purposes.*

23 (2) *APPLICATION OF PROVISIONS.*—*Paragraph*
24 (1) *shall apply only to those quantities of tobacco or*
25 *tobacco products necessary to fulfill the religious, cere-*

1 *monial, or traditional purposes of an Indian tribe or*
 2 *the members of such tribe, and shall not be construed*
 3 *to permit the general marketing of tobacco or tobacco*
 4 *products in a manner that is not in compliance with*
 5 *chapter IX of the Federal Food, Drug, and Cosmetic*
 6 *Act as added by this Act.*

7 (3) *LIMITATION.—Nothing in this Act shall be*
 8 *construed to permit an Indian tribe or member of*
 9 *such a tribe to acquire, possess, use, or transfer any*
 10 *tobacco or tobacco product in violation of section 2342*
 11 *of title 18, United States Code, with respect to the*
 12 *transportation of contraband cigarettes.*

13 **[(c) PAYMENTS TO TOBACCO TRUST FUND.—Any In-**
 14 *dian tribe that engages in the manufacture of tobacco prod-*
 15 *ucts shall be subject to liability for any annual fee pay-*
 16 *ments that are levied on other tobacco product manufactur-*
 17 *ers for purposes of the National Tobacco Settlement Trust*
 18 *Fund. Any Indian tribe that does not pay such fees shall*
 19 *be considered a nonparticipating tobacco product manufac-*
 20 *turer under section 708 of this Act.]*

21 (d) *APPLICATION OF FEDERAL FOOD, DRUG, AND COS-*
 22 *METIC ACT REQUIREMENTS.—*

23 (1) *IN GENERAL.—The provisions of this Act and*
 24 *the provisions of the Food, Drug, and Cosmetic Act*
 25 *(21 U.S.C. 301 et seq.) relating to the manufacture,*

1 *distribution, and sale of tobacco products shall apply*
2 *in Indian country and on other trust lands subject to*
3 *the jurisdiction of an Indian tribe. To the extent that*
4 *an Indian tribe engages in the manufacture, distribu-*
5 *tion, or sale of tobacco products, the provisions of this*
6 *Act apply to that tribe.*

7 (2) *JURISDICTION.*—*With respect to tobacco-re-*
8 *lated activities that take place in Indian country or*
9 *on trust lands within the jurisdiction of an Indian*
10 *tribe, the responsibility for enforcing the regulations*
11 *promulgated under paragraph (1) shall be vested in—*

12 (A) *the Indian tribe involved;*

13 (B) *the State within which the lands of the*
14 *Indian tribe are located, under a voluntary coop-*
15 *erative agreement entered into by the State and*
16 *the Indian tribe or tribal organization; or*

17 (C) *the Secretary.*

18 (3) *ELIGIBILITY FOR ASSISTANCE.*—*Under the*
19 *regulations promulgated under paragraph (1), the*
20 *Secretary, in consultation with the Secretary of the*
21 *Interior, shall provide assistance to an Indian tribe*
22 *in meeting and enforcing the requirements under such*
23 *regulations, including grant funds, if—*

24 (A) *the tribe or tribal organization has a*
25 *governing body that has powers and carries out*

1 *duties that are similar to the powers and duties*
2 *of State or local governments;*

3 *(B) the functions to be exercised through the*
4 *use of such assistance relate to activities con-*
5 *ducted in Indian country and on other trust*
6 *lands subject to the jurisdiction of the tribe; and*

7 *(C) the tribe is reasonably expected to be ca-*
8 *pable of carrying out the functions required by*
9 *the Secretary.*

10 (4) *DETERMINATIONS.*—*Not later than 60 days*
11 *after the date on which an Indian tribe submits an*
12 *application for assistance under paragraph (3), the*
13 *Secretary shall make a determination concerning the*
14 *eligibility of such tribe for such assistance.*

15 (5) *IMPLEMENTATION BY THE SECRETARY.*—*If*
16 *the Secretary determines that the Indian tribe is not*
17 *willing or not qualified to administer the require-*
18 *ments of the regulations promulgated under this sub-*
19 *section, or the tribe is considered to be a non-partici-*
20 *pating tobacco product manufacturer, the Secretary,*
21 *in consultation with the Secretary of the Interior,*
22 *shall implement and enforce such regulations on be-*
23 *half of the tribe.*

24 (6) *DEFICIENT APPLICATIONS; OPPORTUNITY TO*
25 *CURE.*—*If the Secretary determines under paragraph*

1 (4) *that a tribe is not eligible for assistance under*
 2 *this subsection, the Secretary shall—*

3 (A) *submit to such tribe in writing, a state-*
 4 *ment of the reasons for such determination; and*

5 (B) *shall assist such tribe in overcoming*
 6 *any deficiencies that resulted in the determina-*
 7 *tion of ineligibility.*

8 *After an opportunity to review and cure such defi-*
 9 *ciencies, the tribe may re-apply to the Secretary for*
 10 *assistance under this subsection.*

11 (e) *RETAIL LICENSING REQUIREMENTS.—*

12 (1) *IN GENERAL.—The requirements of the Fed-*
 13 *eral Food, Drug, and Cosmetic Act (21 U.S.C. 301 et*
 14 *seq.) and this Act with respect to the licensing of to-*
 15 *bacco retailers shall apply to retailers that sell to-*
 16 *bacco or tobacco products in Indian country or on*
 17 *trust lands within the jurisdiction of an Indian tribe.*

18 (2) *MINIMUM FEDERAL STANDARDS.—*

19 (A) *IN GENERAL.—Not later than 180 days*
 20 *after the date of enactment of this Act, the Sec-*
 21 *retary shall promulgate regulations to authorize*
 22 *an Indian tribe to implement a tribal tobacco*
 23 *product licensing program in Indian country or*
 24 *on trust lands within the jurisdiction of that In-*
 25 *dian tribe.*

1 (B) *MINIMUM STANDARDS.*—*In order for an*
 2 *Indian tribe to assume responsibility for the li-*
 3 *censing and regulation of tobacco-related activi-*
 4 *ties conducted in Indian country or on other*
 5 *trust lands subject to the jurisdiction of an In-*
 6 *dian tribe, the Indian tribe shall establish terms,*
 7 *conditions, and standards similar to those de-*
 8 *scribed in section 224 of this Act for a State li-*
 9 *censing law.*

10 (C) *WAIVER.*—*An Indian tribe shall have*
 11 *the same right to apply for waiver and modifica-*
 12 *tion of the law described in subparagraph (B) as*
 13 *a State under the Act involved.*

14 (3) *IMPLEMENTATION BY THE SECRETARY.*—*If*
 15 *the Secretary, in consultation with the Secretary of*
 16 *the Interior, determines that the Indian tribe is not*
 17 *qualified to meet the minimum standards of para-*
 18 *graph (2)(B), or the Secretary, in consultation with*
 19 *the Secretary of the Interior, shall implement such re-*
 20 *quirements on behalf of the Indian tribe.*

21 (f) *ELIGIBILITY FOR PUBLIC HEALTH PAYMENTS.*—

22 (1) *GRANT.*—*For each fiscal year the Secretary*
 23 *shall award a grant to each Indian tribe that has an*
 24 *approved anti-smoking plan for the fiscal year in-*

1 *involved under paragraph (2) in an amount equal to*
2 *the amount determined under paragraph (3).*

3 (2) *TRIBAL PLANS.—To be eligible to receive a*
4 *grant under paragraph (1), an Indian tribe shall pre-*
5 *pare and submit to the Secretary an anti-smoking*
6 *plan and shall otherwise meet the requirements of*
7 *subsection (e). The Secretary shall promulgate regula-*
8 *tions providing for the form and content of anti-*
9 *smoking plans to be submitted under this paragraph.*

10 (3) *AMOUNT DETERMINED.—Except as provided*
11 *in this subsection, the amount of any grant for which*
12 *an Indian tribe is eligible under paragraph (1) shall*
13 *be determined by the Secretary based on the product*
14 *of—*

15 (A) *the ratio of the total number of individ-*
16 *ual residing on or in such tribe's reservation, ju-*
17 *risdictional lands, or the active user population,*
18 *relative to the total population of the State in-*
19 *volved; and*

20 (B) *the amount allocated under this Act to*
21 *the State for such public health purposes.*

22 (4) *USE.—Amounts provided to a tribe under*
23 *this subsection shall be used to reimburse the tribe for*
24 *smoking-related health expenditures, to further the*
25 *purposes of this Act and in accordance with a tribal*

1 *anti-smoking plan approved by the Secretary. Indian*
 2 *tribes shall have the flexibility to utilize such amounts*
 3 *to meet the unique health care needs of persons within*
 4 *their service populations within the context of tribal*
 5 *health programs if such programs meet the fundamen-*
 6 *tal Federal goals and purposes of Federal Indian*
 7 *health care law and policy.*

8 (5) *REALLOTMENT.—Amounts set aside and not*
 9 *expended under this subsection shall be reallocated*
 10 *among other eligible Indian tribes.*

11 (g) *OBLIGATIONS OF TOBACCO PRODUCT MANUFAC-*
 12 *TURERS.—Tobacco product manufacturers, including In-*
 13 *dian tribes, participating in, or covered under this any Act*
 14 *shall not engage in any activity in Indian country or on*
 15 *other trust lands subject to the jurisdiction of an Indian*
 16 *tribe that is prohibited by this Act.*

17 (h) *USE OF TRUST FUND PAYMENTS.—Amounts made*
 18 *available from the [tobacco trust fund] **National To-***
 19 ***bacco Settlement Trust Fund** under any Indian*
 20 *health provisions of this Act shall be provided to the Indian*
 21 *Health Service and, through the provisions of the Indian*
 22 *Self Determination and Education Assistance Act (25*
 23 *U.S.C. 450b et seq.), to Indian tribes to be used to reduce*
 24 *tobacco consumption, promote smoking cessation, and to*
 25 *fund related activities including—*

1 (1) clinic and facility design, construction, re-
2 pair, renovation, maintenance, and improvement;

3 (2) health care provider services and equipment;

4 (3) domestic and community sanitation associ-
5 ated with clinic and facility construction and im-
6 provement;

7 (4) inpatient and outpatient services; and

8 (5) other programs and services which have as
9 their goal raising the health status of Indians.

10 (i) *PREEMPTION*.—

11 (1) *IN GENERAL*.—*Except as otherwise provided*
12 *in this section, nothing in this Act shall be construed*
13 *to prohibit an Indian tribe from imposing require-*
14 *ments, prohibitions, penalties, or other measures to*
15 *further the purposes of this title that are in addition*
16 *to the requirements, prohibitions, or penalties re-*
17 *quired by this title.*

18 (2) *PUBLIC EXPOSURE TO SMOKE*.—*Nothing in*
19 *this title shall be construed to preempt or otherwise*
20 *affect any Indian tribe rule or practice that provides*
21 *greater protections from the health hazards of envi-*
22 *ronmental tobacco smoke.*

23 **SEC. 604. STATE TOBACCO EXCISE TAX COMPLIANCE.**

24 *An Indian tribe or tribal corporation shall collect any*
25 *excise or sales tax imposed by a State, within the exterior*

1 borders or which the sale occurs, on non-members of the In-
 2 dian tribe as a consequence of the purchase of tobacco prod-
 3 ucts by the non-member from the Indian tribe or tribal cor-
 4 poration. The Indian tribe or tribal corporation shall remit
 5 such taxes collected to the Treasury of the United States,
 6 which shall, in turn, remit the taxes to the State in which
 7 they were collected.

8 **TITLE VII—CIVIL LIABILITY OF** 9 **TOBACCO PRODUCT MANU-** 10 **FACTURERS**

11 **SEC. 701. DEFINITIONS**

12 *In this title:*

13 (1) *ADDICTION CLAIM; DEPENDENCE CLAIM.—*

14 *The term “addiction claim” or “dependence claim”*
 15 *refers only to any claim for relief which is predicated*
 16 *upon claims of addiction to, or dependence on, to-*
 17 *bacco products, but neither term includes claims*
 18 *based upon manifestation of tobacco-related diseases.*

19 (2) *AFFILIATE.—The term “affiliate” means a*
 20 *person who directly or indirectly owns or controls, is*
 21 *owned or controlled by, or is under common owner-*
 22 *ship or control with, another person. For purposes of*
 23 *this definition, ownership means ownership of an eq-*
 24 *uity interest, or the equivalent thereof, of 10 percent*
 25 *or more, and person means an individual, partner-*

1 *ship, committee, association, corporation, or any*
2 *other organization or group of persons.*

3 (3) *CIVIL ACTION.*—*The term “civil action”*
4 *means any action, lawsuit, or proceeding that is not*
5 *a criminal action.*

6 (4) *COMPENSATORY DAMAGES.*—*The term “com-*
7 *pensatory damages” refers to those damages necessary*
8 *to reimburse an injured party, and includes actual,*
9 *general, and special damages.*

10 (5) *COURT.*—*The term “court” means any judi-*
11 *cial court, forum, or tribunal within the United*
12 *States, including without limitation any Federal,*
13 *State, or tribal court.*

14 (6) *FINAL JUDGMENT.*—*The term “final judg-*
15 *ment” means a judgment on which all rights of ap-*
16 *peal or discretionary review have been exhausted or*
17 *waived or for which the time to appeal or seek such*
18 *discretionary review has expired.*

19 (7) *FINAL SETTLEMENT.*—*The term “final settle-*
20 *ment” means a settlement agreement that is executed*
21 *and approved as necessary to be fully binding on all*
22 *relevant parties.*

23 (8) *INDIVIDUAL.*—*The term “individual” means*
24 *a human being and does not include a corporation,*
25 *partnership, unincorporated association, trust, estate,*

1 or any other public or private entity, State or local
2 government, or Indian tribe.

3 (9) *PUNITIVE DAMAGES*.—The term “punitive
4 damages” means damages in addition to compen-
5 satory damages having the character of punishment
6 or penalty.

7 (10) *REDUCED RISK TOBACCO PRODUCTS*.—The
8 term “reduced risk tobacco product” means a product
9 designated as a reduced risk tobacco product under
10 section 916(a)(2) of the Federal Food, Drug, and Cos-
11 metic Act.

12 (11) *SECRETARY*.—The term “Secretary” means
13 the Secretary of the Treasury, except where the con-
14 text otherwise requires.

15 (12) *TOBACCO CLAIM*.—The term “tobacco
16 claim” means a claim directly or indirectly arising
17 out of, based on, or related to the health-related effects
18 of tobacco products, including without limitation a
19 claim arising out of, based on, or related to allega-
20 tions regarding any conduct, statement, or omission
21 respecting the health-related effects of such products.

22 (13) *TOBACCO PRODUCT*.—The term “tobacco
23 product” means cigarettes, cigarette tobacco, smokeless
24 tobacco, little cigars, roll-your-own tobacco, and fine
25 cut tobacco products.

1 (14) *TOBACCO PRODUCT MANUFACTURER.*—*The*
2 *term “tobacco product manufacturer” means—*

3 *(A) a person who directly, and not through*
4 *any affiliate—*

5 *(i) manufactures tobacco products for*
6 *sale in the United States after the date of*
7 *enactment of this Act, including tobacco*
8 *products for sale in the United States*
9 *through an importer;*

10 *(ii) is, after the date of enactment of*
11 *this Act, the first purchaser for resale in the*
12 *United States of tobacco products manufac-*
13 *tured for sale outside of the United States;*

14 *(iii) engaged in activities described in*
15 *clause (i) or (ii) prior to the date of enact-*
16 *ment of this Act, has not engaged in such*
17 *activities after the date of enactment of this*
18 *Act, and was not as of June 20, 1997, an*
19 *affiliate of a participating tobacco product*
20 *manufacturer in which the participating to-*
21 *bacco product manufacturer or its other af-*
22 *filiates owned a 50 percent or greater inter-*
23 *est;*

24 *(iv) is a successor or assign of any of*
25 *the foregoing; or*

1 (v) is an entity to which any of the
 2 foregoing directly or indirectly makes, after
 3 the date of enactment of this Act, a fraudu-
 4 lent conveyance or a transfer that would
 5 otherwise be voidable under part 5 of title
 6 11 of the United States Code, but only to
 7 the extent of the interest or obligation trans-
 8 ferred; but

9 (B) does not include an affiliate of a to-
 10 bacco product manufacturer unless that affiliate
 11 is described in clause (i), (ii), (iii), (iv), or (v)
 12 of subparagraph (A).

13 **SEC. 702. APPLICATION.**

14 (a) *IN GENERAL.*—The provisions of this title shall
 15 apply to any civil action involving a tobacco claim, includ-
 16 ing any such claim that has not reached final judgment
 17 or final settlement as of the date of enactment of this Act,
 18 that is brought or maintained against—

19 (1) a participating tobacco product manufac-
 20 turer or its predecessors;

21 (2) any person that at any time was or is an
 22 affiliate, officer, director, employee, attorney, or agent
 23 of a participating tobacco product manufacturer, un-
 24 less such person is itself a non-participating tobacco
 25 product manufacturer;

1 (3) *an importer, distributor, wholesaler, or re-*
2 *tailer of tobacco products—*

3 (A) *that, after the date of enactment of this*
4 *Act, does not import, distribute, or sell tobacco*
5 *products made or sold by a non-participating to-*
6 *bacco product manufacturer;*

7 (B) *whose business practices with respect to*
8 *sales or operations occurring within the United*
9 *States, conform to the applicable requirements of*
10 *the marketing and advertising provisions of the*
11 *Master Settlement Agreement; and*

12 (C) *that is not itself a non-participating to-*
13 *bacco product manufacturer;*

14 (4) *a supplier of component or constituent parts*
15 *of tobacco products—*

16 (A) *that, after the date of enactment of this*
17 *Act, does not knowingly sell any component or*
18 *constituent parts of tobacco products to a non-*
19 *participating tobacco product manufacturer;*

20 (B) *whose business practices with respect to*
21 *sales or operations occurring within the United*
22 *States, conform to the applicable requirements of*
23 *the marketing and advertisement provisions of*
24 *the Master Settlement Agreement; and*

1 (C) that is not itself a non-participating to-
2 bacco product manufacturer;

3 (5) a grower of tobacco products, unless such per-
4 son is itself a non-participating tobacco product man-
5 ufacturer; or

6 (6) an insurer of any person described in para-
7 graph (1), (2), (3), (4), or (5) based on, arising out
8 of, or related to tobacco products manufactured, im-
9 ported, distributed, or sold (or tobacco grown) by such
10 person (other than an action brought by the insured
11 person), unless such insurer is itself a non-participat-
12 ing tobacco product manufacturer.

13 (b) *EXCEPTIONS.*—The provisions of this title shall not
14 apply to any tobacco claim—

15 (1) brought against any person other than a per-
16 son described in subsection (a) or to any tobacco
17 claim that reached final judgment or final settlement
18 prior to the date of enactment of this Act;

19 (2) against an employer under valid workers’
20 compensation laws;

21 (3) arising under the securities laws of a State
22 or the United States;

23 (4) brought by the United States;

1 (5) brought under this title by a State or a par-
 2 ticipating tobacco product manufacturer to enforce
 3 this Act;

4 (6) asserting damage to the environment from
 5 exposures other than environmental smoke or second
 6 hand smoke; or

7 (7) against a participating tobacco product
 8 manufacturer if that manufacturer, or any of its
 9 principal officers, acting in that officer's corporate
 10 capacity, is convicted of—

11 (A) manufacturing or distributing mis-
 12 branded tobacco products in violation of the Fed-
 13 eral Food, Drug, and Cosmetic Act;

14 (B) violating the reporting requirements of
 15 section 5762(a)(4) of the Internal Revenue Code
 16 of 1986 (26 U.S.C. 5762(a)(4));

17 (C) violating, or aiding and abetting the
 18 violation of, any provision of chapter 114 of title
 19 18, United States Code; or

20 (D) violating any provision of chapter 47
 21 or chapter 63 of title 18, United States Code, in
 22 making reports or disclosures under this Act.

23 (c) *STATE OPTION FOR ONE-TIME OPT OUT.*—The
 24 Secretary shall establish procedures under which the attor-
 25 ney general of a State may, not later than 1 year after

1 *the date of enactment of this Act, elect not to resolve a civil*
 2 *action described in subsection (a) or not to enter into the*
 3 *Master Settlement Agreement. A State whose attorney gen-*
 4 *eral makes such an election shall not be eligible to receive*
 5 *payments from the [trust fund established by section 401]*
 6 ***National Tobacco Settlement Trust Fund.*** *Pro-*
 7 *cedures under this paragraph shall permit such a State to*
 8 *make such an election on a one-time basis.*

9 **SEC. 703. PREEMPTION AND RELATIONSHIP TO OTHER LAW.**

10 (a) *PREEMPTION.*—*No civil action involving a tobacco*
 11 *claim to which this title applies shall be maintained in any*
 12 *court except in accordance with this title.*

13 (b) *RELATIONSHIP TO STATE LAW.*—*This title super-*
 14 *sedes State law only to the extent that State law is incon-*
 15 *sistent with this title.*

16 (c) *CRIMINAL LIABILITY.*—*Nothing in this title shall*
 17 *be construed to limit the criminal liability of tobacco prod-*
 18 *uct manufacturers, retailers, or distributors, or their offi-*
 19 *cers, directors, employees, successors, or assigns.*

20 **SEC. 704. GOVERNMENTAL CLAIMS AND CASTANO CIVIL AC-**
 21 ***TIONS.***

22 (a) *IN GENERAL.*—*Except as provided in subsection*
 23 *(b) and in section 702(c), no State, political subdivision*
 24 *of a State, municipal corporation, governmental entity or*
 25 *corporation, Indian tribe, or agency or subdivision thereof,*

1 *or other entity acting in parens patriae, may file or main-*
 2 *tain any civil action involving a tobacco claim.*

3 (b) *EFFECT OF SETTLEMENT AGREEMENT OR CON-*
 4 *SENT DECREE.*—*Within 30 days after the date of enactment*
 5 *of this Act, any State may request that tobacco product*
 6 *manufacturers enter into the Master Settlement Agreement*
 7 *or a consent decree. If a State makes such a request and*
 8 *enters into a consent decree, it may maintain a civil action*
 9 *involving a tobacco claim only to the extent necessary to*
 10 *permit continuing court jurisdiction over the consent de-*
 11 *cree. Nothing herein shall preclude any State from bringing*
 12 *suit or seeking a court order to enforce the terms of the Mas-*
 13 *ter Settlement Agreement or a consent decree.*

14 (c) *CASTANO CIVIL ACTIONS.*—

15 (1) *The rights and benefits afforded in section*
 16 *221 of this Act, and the various research activities en-*
 17 *visioned by this Act, are provided in settlement of,*
 18 *and shall constitute the exclusive remedy for the pur-*
 19 *pose of determining civil liability as to those claims*
 20 *asserted in the Castano Civil Actions, and all bases*
 21 *for any such claim under the laws of any State are*
 22 *preempted (including State substantive, procedural,*
 23 *remedial, and evidentiary provisions) and settled. The*
 24 *Castano Civil Actions shall be dismissed with full res-*
 25 *ervation of the rights of individual class members to*

1 *pursue claims not based on addiction or dependency*
2 *in civil actions in accordance with this Act. For pur-*
3 *poses of determining application of statutes of limita-*
4 *tion or repose, individual actions filed within one*
5 *year after the effective date of this Act by those who*
6 *were included within a Castano Civil Action shall be*
7 *considered to have been filed as of the date of the*
8 *Castano Civil Action applicable to said individual.*

9 *(2) For purposes of awarding attorneys fees and*
10 *expenses for those actions subject to this subsection,*
11 *the matter at issue shall be submitted to arbitration*
12 *before one panel of arbitrators. In any such arbitra-*
13 *tion, the arbitration panel shall consist of 3 persons,*
14 *one of whom shall be chosen by the attorneys of the*
15 *Castano Plaintiffs' Litigation Committee who were*
16 *signatories to the Memorandum of Understanding*
17 *dated June 20, 1997, by and between tobacco product*
18 *manufacturers, the Attorneys General, and private at-*
19 *torneys, one of whom shall be chosen by the partici-*
20 *pating tobacco product manufacturers, and one of*
21 *whom shall be chosen jointly by those 2 arbitrators.*

22 *(3) The participating tobacco product manufac-*
23 *turers shall pay the arbitration award.*

1 **SEC. 705. CONCURRENT JURISDICTION; FEDERAL CAUSE OF**
2 **ACTION; ACTIONS; DAMAGES; LIABILITY.**

3 (a) *IN GENERAL.*—Any tobacco claim in any civil ac-
4 tion to which this title applies shall be deemed to arise
5 under this section and shall be governed by the provisions
6 of this title, but the substantive rules of decision for such
7 claim shall be derived from the law of the State or Tribe
8 that would have been applicable but for the operation of
9 this section, to the extent that such law is not inconsistent
10 with the provisions of this title. This Federal cause of action
11 shall be the exclusive means for the purpose of determining
12 civil liability on any such tobacco claim in any civil action
13 to which this title applies, and all other bases for tobacco
14 claims under State, Tribal, and local law are hereby pre-
15 empted. District courts of the United States and tribal
16 courts shall have concurrent jurisdiction with the courts of
17 the States over any tobacco claim in any civil action under
18 this section.

19 (b) *PERMISSIBLE DEFENDANTS.*—In any civil action
20 to which this subtitle applies, tobacco claims may be filed
21 or maintained only against—

22 (1) a tobacco product manufacturer; or

23 (2) a surviving entity established by a tobacco
24 product manufacturer.

1 (c) *ADDICTION AND DEPENDENCE CLAIMS BARRED.*—

2 *In any civil action to which this title applies, no addiction*
3 *claim or dependence claim may be filed or maintained.*

4 (d) *REQUIREMENTS.*—*The following requirements*
5 *apply to civil actions to which this title applies:*

6 (1) *FUTURE REDUCED-RISK PRODUCTS.*—*In any*
7 *civil action to which this subtitle applies, no allega-*
8 *tion or evidence relating to reduced-risk tobacco prod-*
9 *ucts developed after the date of enactment of this Act*
10 *shall be admissible or discoverable in any action on*
11 *a tobacco claim arising out of, based on, or related*
12 *to any other tobacco product.*

13 (2) *PRODUCTION OF DOCUMENTS.*—*All docu-*
14 *ments or other records included in the document de-*
15 *pository required to be established and maintained*
16 *under section 903 of this Act shall be deemed pro-*
17 *duced in any civil action involving a tobacco claim,*
18 *and no court in such action shall require additional*
19 *production of any such document or record. Any such*
20 *document submitted to the court shall be considered*
21 *authenticated with the same legal status as the origi-*
22 *nal.*

23 (e) *LIABILITY.*—*The following provisions regarding li-*
24 *ability shall apply in civil actions to which this title ap-*
25 *plies:*

1 (1) *A tobacco product manufacturer shall be lia-*
2 *ble for any act or omission of its attorneys, advertis-*
3 *ing agencies, and agents undertaken in the represen-*
4 *tation of such tobacco product manufacturer.*

5 (2) *A tobacco product manufacturer shall be lia-*
6 *ble in connection with any tobacco claim for the li-*
7 *ability, if any, of any of its affiliates arising from to-*
8 *bacco products sold directly by such affiliate in the*
9 *United States or to an importer for resale in the*
10 *United States, unless such affiliate is a participating*
11 *tobacco product manufacturer or a non-participating*
12 *tobacco product manufacturer.*

13 (3) *Participating tobacco product manufacturers*
14 *shall not be jointly and severally liable on a tobacco*
15 *claim with non-participating tobacco product manu-*
16 *facturers. Nothing in this title prevents a participat-*
17 *ing tobacco product manufacturer from being held*
18 *jointly and severally liable with any other person*
19 *other than a non-participating tobacco product man-*
20 *ufacturer if such liability exists under the applicable*
21 *substantive rules of decision as determined under sub-*
22 *section (a), except that any such imposition of joint*
23 *and several liability against a participating tobacco*
24 *product manufacturer shall be subject to the provi-*
25 *sions of section 706.*

1 (4) *In any civil action involving both a tobacco*
2 *claim against a participating tobacco product manu-*
3 *facturer based in whole or in part upon conduct oc-*
4 *curing prior to the date of enactment of this Act and*
5 *a claim against 1 or more non-participating tobacco*
6 *product manufacturers, the court, upon application of*
7 *a participating tobacco product manufacturer shall*
8 *sever a trial so that all claims against participating*
9 *tobacco product manufacturers shall be tried sepa-*
10 *rately from any claim involving non-participating to-*
11 *bacco product manufacturers. If such severance results*
12 *in a tobacco claim being submitted to more than 1*
13 *jury or to the same jury for separate deliberation the*
14 *participating tobacco product manufacturer may not*
15 *assert any claim that would prejudice the dollar*
16 *amount to be recovered by the holder of the tobacco*
17 *claim from the participating tobacco product manu-*
18 *facturer due to the severance of the action including*
19 *satisfaction by way of jury verdict against the non-*
20 *participating tobacco product manufacturer. In any*
21 *action brought against a participating tobacco manu-*
22 *facturer and a person that is not a tobacco product*
23 *manufacturer, the court may sever the trial so that all*
24 *claims against such person may be tried separately.*

1 (5) *In any civil action brought involving a to-*
2 *bacco claim, there shall be a presumption that nico-*
3 *tine is addictive and that the diseases identified as*
4 *being caused by use of tobacco products in the Center*
5 *for Disease Control and Prevention Reducing the*
6 *Health Consequences of Smoking: 25 Years of*
7 *Progress: A Report of the Surgeon General (United*
8 *States Public Health Service 1989), The Health Con-*
9 *sequences of Smoking: Involuntary Smoking,*
10 *(USPHS 1986); and The Health Consequences of*
11 *Using Smokeless Tobacco, (USPHS 1986), are caused*
12 *in whole or in part by the use of tobacco products,*
13 *(referred to elsewhere in this paragraph as the “gen-*
14 *eral causation presumption”), and a jury empaneled*
15 *to hear a tobacco claim shall be so instructed. In all*
16 *other respects, the burden of proof as to the issue of*
17 *whether a plaintiff’s specific disease or injury was*
18 *caused by smoking shall be governed by the law of*
19 *the State or Tribe in which the tobacco claim was*
20 *brought. The general causation presumption shall in*
21 *no way affect the ability of the defendant to introduce*
22 *evidence or argument which the defendant would oth-*
23 *erwise be entitled to present under the law of the*
24 *State or Tribe in which the tobacco claim was*
25 *brought to rebut the general causation presumption,*

1 *or with respect to general causation, specific causa-*
 2 *tion, or alternative causation, or to introduce any*
 3 *other evidence or argument which the defendant*
 4 *would otherwise be entitled to make.*

5 **[(f) PRESERVATION OF INSURANCE CLAIMS.—**

6 **[(1) IN GENERAL.—***If all participating tobacco*
 7 *product manufacturers fail to make the payments re-*
 8 *quired by this Act for any calendar year, then—*

9 **[(A)** *beginning on the first day of the next*
 10 *calendar year, subsection (a) does not apply to*
 11 *any insurance claim (including a direct action*
 12 *claim) that is a tobacco claim, regardless of*
 13 *when that claim arose;*

14 **[(B)** *any statute of limitations or doctrine*
 15 *of laches under applicable law shall be tolled for*
 16 *the period—*

17 **[(i)** *beginning on the date of enact-*
 18 *ment of this Act; and*

19 **[(ii)** *ending on the last day of that*
 20 *calendar year; and*

21 **[(C)** *an insurance claim (including a di-*
 22 *rect action claim) that is a tobacco claim and*
 23 *that is pending on the date of enactment of this*
 24 *Act shall be preserved.*

1 **[(2) APPLICATION OF TITLE 11, UNITED STATES**
 2 *CODE.—For purposes of this subsection, nothing in*
 3 *this Act shall be construed to modify, suspend, or oth-*
 4 *erwise affect the application of title 11, United States*
 5 *Code, to participating tobacco manufacturers that fail*
 6 *to make such payments.*

7 **[(3) STATE LAW NOT AFFECTED.—***Nothing in*
 8 *this subsection shall be construed to expand or abridge*
 9 *State law.]*

10 **SEC. 706. PAYMENT OF TOBACCO CLAIM SETTLEMENTS AND**
 11 **JUDGMENTS.**

12 *(a) IN GENERAL.—Except as provided below, any*
 13 *judgment or settlement in any civil action to which this*
 14 *subtitle applies shall be subject to the process for payment*
 15 *of judgments and settlements set forth in this section. No*
 16 *participating tobacco product manufacturer shall be obli-*
 17 *gated to pay a judgment or settlement on a tobacco claim*
 18 *in any civil action to which this title applies except in ac-*
 19 *cordance with this section. This section shall not apply to*
 20 *the portion, if any, of a judgment that imposes punitive*
 21 *damages based on any conduct that—*

22 *(1) occurs after the date of enactment of this Act;*
 23 *and*

24 *(2) is other than the manufacture, development,*
 25 *advertising, marketing, or sale of tobacco products in*

1 *compliance with this Act and the Master Settlement*
2 *Agreement.*

3 **(b) REGISTRATION WITH THE SECRETARY OF THE**
4 **TREASURY.—**

5 *(1) The Secretary shall maintain a record of set-*
6 *tlements, judgments, and payments in civil actions to*
7 *which this title applies.*

8 *(2) Any party claiming entitlement to a mone-*
9 *tary payment under a final judgment or final settle-*
10 *ment on a tobacco claim shall register such claim*
11 *with the Secretary by filing a true and correct copy*
12 *of the final judgment or final settlement agreement*
13 *with the Secretary and providing a copy of such fil-*
14 *ing to all other parties to the judgment or settlement.*

15 *(3) The Secretary shall assign a priority for*
16 *payment based upon the date on which a proper reg-*
17 *istration of a final judgment or final settlement oc-*
18 *curs.*

19 *(4) Any participating tobacco product manufac-*
20 *turer making a payment on any final judgment or*
21 *final settlement to which this section applies shall cer-*
22 *tify such payment to the Secretary by filing a true*
23 *and correct copy of the proof of payment and a state-*
24 *ment of the remaining unpaid portion, if any, of such*
25 *final judgment or final settlement with the Secretary*

1 and shall provide a copy of such filing to all other
2 parties to the judgment or settlement.

3 (c) *LIABILITY CAP.*—The aggregate payments made by
4 all participating tobacco product manufacturers in any cal-
5 endar year may not exceed \$6,500,000,000. The Secretary
6 shall initiate a rulemaking within 30 days after the date
7 of enactment of this Act to establish a mechanism for imple-
8 menting this subsection in such a way that payments may
9 be made from all awards payable in that year. Amounts
10 not payable because of the application of this subsection,
11 shall be carried forward and paid in the next year, subject
12 to the provisions of this subsection.

13 (d) *INJUNCTIVE RELIEF.*—A participating tobacco
14 product manufacturer may commence an action to enjoin
15 any State court proceeding to enforce or execute any judg-
16 ment or settlement where payment has not been authorized
17 under this section. Such an action shall arise under the
18 laws of the United States and may be commenced in the
19 district court of the United States for the district in which
20 the State court proceeding is pending.

21 (e) *JOINT AND SEVERAL LIABILITY.*—All participat-
22 ing tobacco product manufacturers shall be jointly and sev-
23 erally liable for, and shall enter into an agreement to ap-
24 portion among them, any amounts payable under judg-
25 ments and settlements governed by this section arising in

1 *whole or in part from conduct occurring prior to the date*
 2 *of enactment of this Act. No participating tobacco product*
 3 *manufacturer shall cease operations without establishing a*
 4 *surviving entity against which a tobacco claim may be*
 5 *brought. Any obligation or interest of a participating, to-*
 6 *bacco product manufacturer arising under such liability*
 7 *apportionment agreement shall be given priority and shall*
 8 *not be rejected, avoided, or discharged in a proceeding,*
 9 *under title 11, United States Code, or in any liquidation,*
 10 *reorganization, receivership, or other insolvency proceeding*
 11 *under State law.*

12 **SEC. 707. ATTORNEY'S FEES AND EXPENSES.**

13 (a) *ARBITRATION PANEL.*—

14 (1) *ESTABLISHMENT.*—*For the purpose of*
 15 *awarding of attorneys' fees and expenses relating to*
 16 *litigation affected by, or legal services that, in whole*
 17 *or in part, resulted in or created a model for pro-*
 18 *grams in, this Act, and with respect to which litiga-*
 19 *tion or services the attorney involved is unable to*
 20 *agree with the plaintiff who employed that attorney*
 21 *with respect to any dispute that may arise between*
 22 *them regarding the fee agreement, the matter at issue*
 23 *shall be submitted to arbitration. In any such arbi-*
 24 *tration, the arbitration panel shall consist of 3 per-*
 25 *sons, one of whom shall be chosen by the plaintiff, one*

1 of whom shall be chosen by the attorney, and one of
2 whom shall be chosen jointly by those 2 arbitrators.

3 (2) *OPERATION.*—Not later than 30 days after
4 the date on which all members of an arbitration panel
5 are appointed under paragraph (1), the panel shall
6 establish the procedures under which the panel will
7 operate which shall include—

8 (A) a requirement that any finding by the
9 arbitration panel must be in writing and sup-
10 ported by written reasons;

11 (B) procedures for the exchanging of exhib-
12 its and witness lists by the various claimants for
13 awards;

14 (C) to the maximum extent practicable, re-
15 quirements that proceedings before the panel be
16 based on affidavits rather than live testimony;
17 and

18 (D) a requirement that all claims be sub-
19 mitted to an arbitration panel not later than 3
20 months after the date of this Act and a deter-
21 mination made by the panel with respect to such
22 claims not later than 7 months after such date
23 of enactment.

24 (3) *RIGHT TO PETITION.*—Any individual attor-
25 ney or group of attorneys involved in litigation af-

1 *ected by this Act shall have the right to petition an*
2 *arbitration panel for attorneys' fees and expenses.*

3 (4) *CRITERIA.—In making any award under*
4 *this section, an arbitration panel shall consider the*
5 *following criteria:*

6 (A) *The time and labor required by the*
7 *claimant.*

8 (B) *The novelty and difficulty of the ques-*
9 *tions involved in the action for which the claim-*
10 *ant is making a claim.*

11 (C) *The skill requisite to perform the legal*
12 *service involved properly.*

13 (D) *The preclusion of other employment by*
14 *the attorney due to acceptance of the action in-*
15 *volved.*

16 (E) *Whether the fee is fixed or a percentage.*

17 (F) *Time limitations imposed by the client*
18 *or the circumstances.*

19 (G) *The amount involved and the results ob-*
20 *tained.*

21 (H) *The experience, reputation, and ability*
22 *of the attorneys involved.*

23 (I) *The undesirability of the action.*

24 (J) *Such other factors as justice may re-*
25 *quire.*

1 (5) *APPEAL AND ENFORCEMENT.*—*The findings*
2 *of an arbitration panel shall be final, binding, non-*
3 *appealable, and payable within 30 days after the date*
4 *on which the finding is made public, except that if an*
5 *award is to be paid in installments, the first install-*
6 *ment shall be payable within such 30 day period and*
7 *succeeding installments shall be paid annually there-*
8 *after.*

9 (b) *VALIDITY AND ENFORCEABILITY OF PRIVATE*
10 *AGREEMENTS.*—*Notwithstanding any other provision of*
11 *this Act, nothing in this section shall be construed to abro-*
12 *gate or restrict in any way the rights of any parties to*
13 *mediate, negotiate, or settle any fee or expense disputes or*
14 *issues to which this section applies, or to enter into private*
15 *agreements with respect to the allocation or division of fees*
16 *among the attorneys party to any such agreement.*

17 (c) *OFFSET FOR AMOUNTS ALREADY PAID.*—*In mak-*
18 *ing a determination under this section with regard to a*
19 *dispute between a State that pursued independent civil ac-*
20 *tion against tobacco product manufacturers and its attor-*
21 *ney, the arbitration panel shall take into account any*
22 *amounts already paid by the State under the agreement in*
23 *dispute.*

1 **SEC. 708. NON-PARTICIPATING TOBACCO PRODUCT MANU-**
 2 **FACTURERS.**

3 (a) *IN GENERAL.*—If a tobacco product manufacturer
 4 does not enter into a consent decree or the Protocol before
 5 the date of enactment of this Act, then the limitations on
 6 liability under this title do not apply to that manufacturer.

7 **[(b) IMPOSITION OF FEE.**—

8 **[(1) IN GENERAL.**—There is hereby imposed on
 9 each tobacco product manufacturer described in sub-
 10 section (a) an annual fee for any calendar year end-
 11 ing after the date of enactment of this Act for which
 12 it does not enter into a consent decree or sign the Pro-
 13 tocol.

14 **[(2) AMOUNT.**—

15 **[(A) TOTAL.**—The amount of the annual
 16 fee imposed by paragraph (1) is equal to 150
 17 percent of the amount that would be paid under
 18 section 403 of this Act for that year by that to-
 19 bacco product manufacturer if it were a partici-
 20 pating tobacco product manufacturer.

21 **[(B) PER TOBACCO PRODUCT MANUFAC-**
 22 **TURER.**—The Secretary shall promulgate regula-
 23 tions—

24 **[(i)** under which the amount of the fee
 25 imposed under paragraph (1) for any to-

1 *bacco product manufacturer is to be deter-*
 2 *mined; and*

3 *[(ii) establishing procedures for the as-*
 4 *essment and collection of any fee imposed*
 5 *under paragraph (1).]*

6 **SEC. 709. CONFORMING AMENDMENTS.**

7 *(a) Section 362(b) of title 11, United States Code, is*
 8 *amended by—*

9 *(1) striking “or” after the semicolon in para-*
 10 *graph (17);*

11 *(2) striking “petition.” in paragraph (18) and*
 12 *inserting “petition; or”; and*

13 *(3) adding at the end thereof the following:*

14 *“(19) under subsection (a) of this section, of the*
 15 *commencement or continuation of any action or other*
 16 *proceeding by or against a participating tobacco*
 17 *product manufacturer as defined in section 6(22) of*
 18 *the National Tobacco Policy and Youth Smoking Re-*
 19 *duction Act regarding any interest or obligation aris-*
 20 *ing under or directly related to the Master Settlement*
 21 *Agreement as defined in section 6(21) of that Act or*
 22 *the liability apportionment agreement.”.*

23 *(b) Section 365 of title 11, United States Code, is*
 24 *amended by—*

1 (1) *striking “and (d)” in subsection (a) and in-*
2 *serting “(d), and (p)”;* and

3 (2) *adding at the end thereof the following:*

4 “(p) *The trustee may not reject, shall be deemed to*
5 *have assumed as of the commencement of the case, and shall*
6 *cause the debtor to perform on an executory contract of a*
7 *participating tobacco product manufacturer as defined in*
8 *section 6(22) of the National Tobacco Policy and Youth*
9 *Smoking Reduction Act, to the extent such executory con-*
10 *tract is, or is directly related to, the Master Settlement*
11 *Agreement as defined in section 6(21) of that Act, or the*
12 *liability apportionment agreement described.”.*

13 (c) *Section 507(a) of title 11, United States Code, is*
14 *amended by adding at the end thereof the following:*

15 “(10) *Tenth, any unsecured claim of or against*
16 *a participating tobacco product manufacturer as de-*
17 *fined in section 6(22) of the National Tobacco Policy*
18 *and Youth Smoking Reduction Act, regarding any in-*
19 *terest or obligation that arises under or is directly re-*
20 *lated to the Master Settlement Agreement as defined*
21 *in section 6(21) of that Act, or the liability appor-*
22 *tionment agreement.”.*

23 (d) *Section 541(a) of title 11, United States Code, is*
24 *amended by adding at the end thereof the following:*

1 “(8) *Any interest of the debtor in property to the*
 2 *extent that the debtor has transferred or agreed to*
 3 *transfer such interest under the Master Settlement*
 4 *Agreement as defined in section 6(21) of the National*
 5 *Tobacco Policy and Youth Smoking Reduction Act or*
 6 *any written agreement directly related to such Master*
 7 *Settlement Agreement, or the liability apportionment*
 8 *agreement, or any written agreement directly related*
 9 *to such liability apportionment agreement.”.*

10 *(e) Section 1141 of title 11, United States Code, is*
 11 *amended by—*

12 *(1) striking “(d)(2) and (d)(3)” in subsection (a)*
 13 *and inserting “(d)(2), (d)(3), and (d)(5)”;*

14 *(2) striking “(d)(2) and (d)(3)” in subsection (c)*
 15 *and inserting “(d)(2), (d)(3), and (d)(5)”;* and

16 *(3) adding at the end of subsection (d) the fol-*
 17 *lowing:*

18 *“(5) The confirmation of a plan does not dis-*
 19 *charge a debtor from any debt or other obligation*
 20 *arising under or directly related to the Master Settle-*
 21 *ment Agreement as defined in section 6(21) of the Na-*
 22 *tional Tobacco Policy and Youth Smoking Reduction*
 23 *Act, or the liability apportionment agreement.”.*

1 **TITLE VIII—TOBACCO INDUSTRY**
 2 **COMPLIANCE AND EMPLOYEE**
 3 **PROTECTION FROM REPRIS-**
 4 **ALS**

5 **SEC. 801. TOBACCO INDUSTRY COMPLIANCE ACCOUNTABIL-**
 6 **ITY REQUIREMENTS.**

7 (a) *ESTABLISHMENT OF ACCOUNTABILITY PANEL.*—
 8 *The Commissioner of Food and Drugs, in consultation with*
 9 *the Secretary, shall establish an advisory panel, to be*
 10 *known as the “Tobacco Agreement Accountability Panel”.*
 11 *The panel shall consist of the Surgeon General, the Director*
 12 *of the Center for Disease Control or the Director’s delegate,*
 13 *and the Director of the Health and Human Services Office*
 14 *of Minority Health.*

15 (b) *TOBACCO COMPANY PLAN.*—*Within a year after*
 16 *the date of enactment of this Act, each participating tobacco*
 17 *product manufacturer shall adopt and submit to the Com-*
 18 *missioner a plan to achieve the required percentage reduc-*
 19 *tions in underage use of tobacco products set forth in section*
 20 *201, and thereafter shall update its plan no less frequently*
 21 *than annually. The Commissioner shall provide a copy of*
 22 *each such plan to the panel, which shall review the plan*
 23 *and submit its views on the plan to the Commissioner. The*
 24 *panel may recommend amendment of any plan to incor-*

1 *porate additional measures to reduce underage tobacco use*
 2 *that are consistent with the provisions of this Act.*

3 *(c) ANNUAL REPORT.—The panel shall submit a report*
 4 *to the Commissioner and to the Congress by January 31*
 5 *of each year, which shall be published in the Federal Reg-*
 6 *ister. In its report, the panel shall—*

7 *(1) describe in detail each tobacco product man-*
 8 *ufacturer's compliance with the provisions of this Act*
 9 *and its plan submitted under subsection (b);*

10 *(2) report on whether each tobacco product man-*
 11 *ufacturer's efforts to reduce underage smoking are*
 12 *likely to result in attainment of smoking reduction*
 13 *targets under section 201;*

14 *(3) recommend, where necessary, additional*
 15 *measures individual tobacco companies should under-*
 16 *take to meet those targets; and*

17 *(4) include, where applicable, the extent to which*
 18 *prior panel recommendations have been adopted by*
 19 *each tobacco product manufacturer.*

20 *(d) PUBLIC HEALTH EMERGENCY.—If the panel deter-*
 21 *mines unanimously at any time that a tobacco product*
 22 *manufacturer's actions or inactions with respect to its com-*
 23 *pliance with the Act are of such a nature as to create a*
 24 *clear and present danger to the attainment of the targets*
 25 *for underage smoking reduction, it shall immediately report*

1 *such acts or omissions to the Commissioner. If the Commis-*
 2 *sioner determines that such report is supported by clear and*
 3 *convincing evidence, the Commissioner may bring an action*
 4 *under section 203 seeking the immediate suspension of the*
 5 *tobacco product manufacturer's annual limitation cap on*
 6 *civil judgments. If the court determines that the Commis-*
 7 *sioner has proved by clear and convincing evidence that the*
 8 *subject manufacturer's actions or inactions are of such a*
 9 *nature that they present a clear and present danger to the*
 10 *attainment of the targets for underage smoking reduction,*
 11 *the court may suspend the subject manufacturer's annual*
 12 *limitation cap on civil judgments.*

13 **SEC. 802. TOBACCO PRODUCT MANUFACTURER EMPLOYEE**
 14 **PROTECTION.**

15 (a) *PROHIBITED ACTS.*—No tobacco product manufac-
 16 turer may discharge, demote, or otherwise discriminate
 17 against any employee with respect to compensation, terms,
 18 conditions, benefits, or privileges of employment because the
 19 employee (or any person acting under a request of the em-
 20 ployee)—

21 (1) *notified the manufacturer, the Commissioner*
 22 *of Food and Drugs, the Attorney General, or any Fed-*
 23 *eral, State, or local public health or law enforcement*
 24 *authority of an alleged violation of this or any other*
 25 *Act;*

1 (2) *refused to engage in any practice made un-*
2 *lawful by such Acts, if the employee has identified the*
3 *alleged illegality to the manufacturer;*

4 (3) *testified before Congress or at any Federal or*
5 *State proceeding regarding any provision (or pro-*
6 *posed provision) of such Acts;*

7 (4) *commenced, caused to be commenced, or is*
8 *about to commence or cause to be commenced a pro-*
9 *ceeding under such Acts, or a proceeding for the ad-*
10 *ministration or enforcement of any requirement im-*
11 *posed under such Acts;*

12 (5) *testified or is about to testify in any such*
13 *proceeding; or*

14 (6) *assisted or participated, or is about to assist*
15 *or participate, in any manner in such a proceeding*
16 *or in any other manner in such a proceeding or in*
17 *any other action to carry out the purposes of such*
18 *Acts.*

19 (b) *EMPLOYEE COMPLAINT.—*

20 (1) *Any employee of a tobacco product manufac-*
21 *turer who believes that he or she has been discharged,*
22 *demoted, or otherwise discriminated against by any*
23 *person in violation of subsection (a) of this section*
24 *may, within 180 days after such violation occurs, file*
25 *(or have any person file on his or her behalf) a com-*

1 *plaint with the Secretary alleging such discharge, de-*
2 *motion, or discrimination. Upon receipt of such a*
3 *complaint, the Secretary shall notify the person*
4 *named in the complaint of its filing.*

5 *(2)(A) Upon receipt of a complaint under para-*
6 *graph (1) of this subsection, the Secretary shall con-*
7 *duct an investigation of the violation alleged in the*
8 *complaint. Within 30 days after the receipt of such*
9 *complaint, the Secretary shall complete such inves-*
10 *tigation and shall notify in writing the complainant*
11 *(and any such person acting in his or her behalf) and*
12 *the person alleged to have committed such violation of*
13 *the results of the investigation conducted under this*
14 *paragraph. Within 90 days after the receipt of such*
15 *complaint, the Secretary shall (unless the proceeding*
16 *on the complaint is terminated by the Secretary on*
17 *the basis of a settlement entered into by the Secretary*
18 *and the person alleged to have committed such viola-*
19 *tion) issue an order either providing the relief pre-*
20 *scribed in subparagraph (B) of this paragraph or de-*
21 *nying the complaint. An order of the Secretary shall*
22 *be made on the record after notice and the oppor-*
23 *tunity for a hearing in accordance with sections 554*
24 *and 556 of title 5, United States Code. Upon the con-*
25 *clusion of such a hearing and the issuance of a rec-*

1 ommended decision that the complaint has merit, the
2 Secretary shall issue a preliminary order providing
3 the relief prescribed in subparagraph (B) of this
4 paragraph, but may not order compensatory damages
5 pending a final order. The Secretary may not enter
6 into a settlement terminating a proceeding on a com-
7 plaint without the participation and consent of the
8 complainant.

9 (B) If, in response to a complaint under para-
10 graph (1) of this subsection, the Secretary determines
11 that a violation of this paragraph has occurred, the
12 Secretary shall order the person who committed such
13 violation to (i) take affirmative action to abate the
14 violation, and (ii) reinstate the complainant to his or
15 her former position together with compensation (in-
16 cluding back pay), terms, conditions, and privileges of
17 his or her employment. The Secretary may order such
18 person to provide compensatory damages to the com-
19 plainant. If an order is issued under this subpara-
20 graph, the Secretary, at the request of the complain-
21 ant, shall assess the person against whom the order is
22 issued a sum equal to the aggregate amount of all
23 costs and expenses (including attorneys' and expert
24 witness fees) reasonably incurred (as determined by
25 the Secretary), by the complainant for, or in connec-

1 *tion with, the bringing of the complaint upon which*
2 *the order is issued.*

3 *(3)(A) The Secretary shall dismiss a complaint*
4 *filed under paragraph (1) of this subsection, and shall*
5 *not conduct the investigation required under para-*
6 *graph (2) of this subsection, unless the complainant*
7 *has made a prima facie showing that any behavior*
8 *described in subsection (a) of this section was a con-*
9 *tributing factor in the unfavorable personnel action*
10 *alleged in the complaint.*

11 *(B) Notwithstanding a finding by the Secretary*
12 *that the complainant has made the showing required*
13 *by subparagraph (A) of this paragraph, no investiga-*
14 *tion required under paragraph (2) of this subsection*
15 *shall be conducted if the manufacturer demonstrates*
16 *by clear and convincing evidence that it would have*
17 *taken the same unfavorable personnel action in the*
18 *absence of such behavior. Relief may not be ordered*
19 *under paragraph (1) of this subsection if the manu-*
20 *facturer demonstrates by clear and convincing evi-*
21 *dence that it would have taken the same unfavorable*
22 *personnel action in the absence of such behavior.*

23 *(C) The Secretary may determine that a viola-*
24 *tion of subsection (a) of this section has occurred only*
25 *if the complainant has demonstrated that any behav-*

1 ior described in subsection (a) of this section was a
2 contributing factor in unfavorable personnel action
3 alleged in the complaint.

4 (c) *JUDICIAL REVIEW*.—

5 (1) Any person adversely affected or aggrieved by
6 an order issued under subsection (a) of this section
7 may obtain review of the order in the United States
8 court of appeals for the circuit in which the violation,
9 with respect to which the order was issued, allegedly
10 occurred. The petition for review must be filed within
11 60 days after the issuance of the Secretary's order.
12 Judicial review shall be available as provided in
13 chapter 7 of title 5, United States Code. The com-
14 mencement of proceedings under this subsection shall
15 not, unless ordered by the court, operate as a stay of
16 the Secretary's order.

17 (2) An order of the Secretary with respect to
18 which review could have been obtained under para-
19 graph (1) of this subsection shall not be subject to ju-
20 dicial review in any criminal or civil proceeding.

21 (d) *NONCOMPLIANCE*.—Whenever a person has failed
22 to comply with an order issued under subsection (b)(2) of
23 this section, the Secretary may file a civil action in the
24 United States district court for the district in which the
25 violation occurred to enforce such order. In actions brought

1 *under this subsection, the district courts shall have jurisdic-*
2 *tion to grant all appropriate relief, including injunctive re-*
3 *lief and compensatory and exemplary damages.*

4 *(e) ACTION TO ENSURE COMPLIANCE.—*

5 *(1) Any person on whose behalf an order was*
6 *issued under subsection (b)(2) of this section may*
7 *commence a civil action to require compliance with*
8 *such order against the person to whom such order was*
9 *issued. The appropriate United States district court*
10 *shall have jurisdiction to enforce such order, without*
11 *regard to the amount in controversy or the citizenship*
12 *of the parties.*

13 *(2) The court, in issuing any final order under*
14 *this subsection, may award costs of litigation (includ-*
15 *ing reasonable attorneys' and expert witness fees) to*
16 *any party whenever the court determines such award*
17 *is appropriate.*

18 *(f) ENFORCEMENT.—Any non-discretionary duty im-*
19 *posed by this section shall be enforceable in a mandamus*
20 *proceeding brought under section 1361 of title 28, United*
21 *States Code.*

22 *(g) APPLICABILITY TO CERTAIN EMPLOYEES.—Sub-*
23 *section (a) of this section shall not apply with respect to*
24 *any employee who, acting without direction from the manu-*
25 *facturer (or the agent of the manufacturer) deliberately*

1 *causes a violation of any requirement of this Act, the Fed-*
 2 *eral Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.),*
 3 *or any other law or regulation relating to tobacco products.*

4 *(h) EFFECT ON OTHER LAWS.—This section shall not*
 5 *be construed to expand, diminish, or otherwise affect any*
 6 *right otherwise available to an employee under Federal or*
 7 *State law to redress the employee’s discharge or other dis-*
 8 *criminatory action taken by a tobacco product manufac-*
 9 *turer against the employee.*

10 *(i) POSTING.—The provisions of this section shall be*
 11 *prominently posted in any place of employment to which*
 12 *this section applies.*

13 ***TITLE IX—PUBLIC DISCLOSURE***
 14 ***OF TOBACCO INDUSTRY DOC-***
 15 ***UMENTS***

16 ***SEC. 901. FINDINGS.***

17 *The Congress finds that—*

18 *(1) the American tobacco industry has made*
 19 *claims of attorney-client privilege, attorney work*
 20 *product, and trade secrets to protect from public dis-*
 21 *closure thousands of internal documents sought by*
 22 *civil litigants;*

23 *(2) a number of courts have found that these*
 24 *claims of privilege were not made in good faith; and*

1 (3) a prompt and full exposition of tobacco docu-
2 ments will—

3 (A) promote understanding by the public of
4 the tobacco industry's research and practices;
5 and

6 (B) further the purposes of this Act.

7 **SEC. 902. APPLICABILITY.**

8 This title shall apply to all participating tobacco prod-
9 uct manufacturers.

10 **SEC. 903. NATIONAL TOBACCO DOCUMENT DEPOSITORY.**

11 (a) *ESTABLISHMENT.*—Participating tobacco product
12 manufacturers shall, within 180 days after the enactment
13 of this Act, establish a National Tobacco Document Deposi-
14 tory in the Washington, D.C., area. The cost of establishing
15 and operating the Depository shall be allocated among such
16 manufacturers on the basis of market share or as otherwise
17 agreed among them.

18 (b) *DOCUMENT CATEGORIES.*—Within 30 days after
19 the establishment of the Depository, each participating to-
20 bacco product manufacturer shall submit to the Deposi-
21 tory—

22 (1) all original laboratory research conducted or
23 funded, directly or indirectly, by any participating
24 tobacco product manufacturers, the Center for To-
25 bacco Research and Tobacco Institute relating to the

1 *health effects or safety of tobacco products, including*
2 *without limitation all original laboratory research re-*
3 *lating to any method or means of making tobacco*
4 *products less hazardous to consumers;*

5 *(2) all documents produced by any participating*
6 *tobacco product manufacturer, the Center of Tobacco*
7 *Research or Tobacco Institute to the Attorney General*
8 *of any State during discovery in any action brought*
9 *on behalf of any State and commenced after January*
10 *1, 1994;*

11 *(3) all documents produced by any participating*
12 *tobacco product manufacturer, Center for Tobacco Re-*
13 *search or Tobacco Institute to the Federal Trade Com-*
14 *mission in connection with its investigation into the*
15 *“Joe Camel” advertising campaign and any underage*
16 *marketing of tobacco products to minors;*

17 *(4) all documents produced by any participating*
18 *tobacco product manufacturers, the Center for To-*
19 *bacco Research or the Tobacco Institute to litigation*
20 *adversaries during discovery in any private litigation*
21 *matters;*

22 *(5) all documents produced by any participating*
23 *tobacco product manufacturer, the Center for Tobacco*
24 *Research, or the Tobacco Institute in any of the fol-*
25 *lowing private litigation matters:*

1 (A) *Philip Morris v. American Broadcast-*
2 *ing Co., Law No. 7609CL94x00181-00 (Cir. Ct.*
3 *Va. filed Mar. 26, 1994);*

4 (B) *Estate of Butler v. R.J. Reynolds To-*
5 *bacco Co., Civ. A. No. 94-5-53 (Cir. Ct. Miss.,*
6 *filed May 12, 1994);*

7 (C) *Haines v. Liggett Group, No. 84-CV-*
8 *678 (D.N.J., filed Feb. 22, 1984); and*

9 (D) *Cipollone v. Liggett Group, No. 83-CV-*
10 *284 (D.N.J., filed Aug. 1, 1983);*

11 (6) *any document produced as evidence or poten-*
12 *tial evidence or submitted to the court by participat-*
13 *ing tobacco product manufacturers in any of the ac-*
14 *tions described in paragraph (5), including briefs and*
15 *other pleadings, memoranda, interrogatories, tran-*
16 *scripts of depositions, and expert witnesses and con-*
17 *sultants materials, including correspondence, reports,*
18 *and testimony;*

19 (7) *any additional documents that any partici-*
20 *pating tobacco product manufacturer, the Center for*
21 *Tobacco Research, or the Tobacco Institute have*
22 *agreed or been required by any court to produce to*
23 *litigation adversaries as part of discovery in any ac-*
24 *tion listed in paragraph (2), (3), (4), or (5) but have*

1 *not yet completed producing as of the date of enact-*
2 *ment of this Act;*

3 (8) *all indices of documents relating to tobacco*
4 *products and health, with any such indices that are*
5 *maintained in computerized form placed into the de-*
6 *pository in both a computerized and hard-copy form;*

7 (9) *a privilege log describing each document or*
8 *portion of a document otherwise subject to production*
9 *in the actions enumerated in this subsection that any*
10 *participating tobacco product manufacturer, the Cen-*
11 *ter for Tobacco Research, or the Tobacco Institute*
12 *maintains, based upon a good faith de novo re-review*
13 *conducted after June 20, 1997, is exempt from public*
14 *disclosure under this title; and*

15 (10) *a trade secrecy log describing each docu-*
16 *ment or portion of a document that any participating*
17 *tobacco product manufacturer, the Center for Tobacco*
18 *Research, or the Tobacco Institute maintains is ex-*
19 *empt from public disclosure under this title.*

20 (c) *FUTURE DOCUMENTS.*—*With respect to documents*
21 *created after the date of enactment of this Act, the partici-*
22 *pating tobacco product manufacturers and their trade asso-*
23 *ciations shall place into the depository in accordance with*
24 *a schedule established by the Board the following documents:*

1 (1) *All original laboratory research conducted or*
2 *funded, directly or indirectly, by any participating*
3 *tobacco product manufacturer relating to the health*
4 *effects or safety of tobacco products, including without*
5 *limitation all original laboratory research relating to*
6 *any methods or means of making tobacco products*
7 *less hazardous to consumers.*

8 (2) *All studies conducted or funded, directly or*
9 *indirectly, by any participating tobacco product*
10 *manufacturer, relating to tobacco product use by mi-*
11 *nors.*

12 (3) *All documents discussing or referring to the*
13 *relationship, if any, between advertising and pro-*
14 *motion and the use of tobacco products by minors.*

15 (4) *A privilege log describing each document or*
16 *each portion of a document otherwise subject to public*
17 *disclosure under this subsection that any participat-*
18 *ing tobacco product manufacturer maintains is ex-*
19 *empt from public disclosure under this title.*

20 (5) *A trade secrecy log describing each document*
21 *or each portion of a document otherwise subject to*
22 *public disclosure under this subsection that any par-*
23 *ticipating tobacco product manufacturer, the Center*
24 *for Tobacco Research, or the Tobacco Institute main-*
25 *tains is exempt from public disclosure under this Act.*

1 (d) *DOCUMENT IDENTIFICATION AND INDEX.*—*Docu-*
 2 *ments submitted to the Depository under this section shall*
 3 *be sequentially numbered and marked to identify the par-*
 4 *ticipating tobacco product manufacturer. Within 15 days*
 5 *after submission of documents to the Depository, each to-*
 6 *bacco product manufacturer shall supply the Depository*
 7 *with a comprehensive document index which references the*
 8 *applicable document categories contained in subsection (b).*

9 **SEC. 904. PRIVILEGE AND TRADE SECRET CLAIMS.**

10 (a) *SEPARATE SUBMISSION OF DOCUMENTS.*—*Any*
 11 *document that is subject to a claim by a participating to-*
 12 *bacco product manufacturer of attorney-client privilege, at-*
 13 *torney work product, or trade secret protection shall be so*
 14 *marked and shall be submitted separately to the Depository.*
 15 *Compliance with this subsection shall not be deemed to be*
 16 *a waiver of any applicable claim of privilege or trade secret*
 17 *protection.*

18 (b) *CONFIDENTIALITY.*—*Notwithstanding the provi-*
 19 *sions of section 552 of title 5 of the United States Code*
 20 *or the provisions of any State law, documents, and infor-*
 21 *mation provided to the United States Department of Justice*
 22 *or to State antitrust authorities under the Protocol shall*
 23 *be kept confidential by and among the United States De-*
 24 *partment of Justice and such authorities and shall be used*
 25 *only for the governmental purposes of enforcing this Act,*

1 *the Protocol, and the consent decrees. The inspection and*
 2 *discovery rights provided to the States under the Protocol*
 3 *and this section shall be exercised by each State but coordi-*
 4 *nated through a multi-state States' Attorneys General over-*
 5 *sight committee.*

6 (c) *PRIVILEGE AND TRADE SECRET LOGS.—*

7 (1) *IN GENERAL.—Within 15 days after submit-*
 8 *ting documents to the Depository under subsection*
 9 *(a), each participating tobacco product manufacturer*
 10 *shall submit to the Depository a comprehensive log*
 11 *which identifies on a document-by-document basis all*
 12 *documents produced to the Depository for which the*
 13 *manufacturer asserts attorney-client privilege, attor-*
 14 *ney work-product, or trade secrecy. With respect to*
 15 *documents for which the manufacturer previously has*
 16 *asserted one or more of the aforementioned privileges*
 17 *or trade secret protection, the manufacturer shall con-*
 18 *duct a good faith de novo review of such documents*
 19 *to determine whether such privilege or trade secret*
 20 *protection is appropriate.*

21 (2) *ORGANIZATION OF LOG.—The log shall be or-*
 22 *ganized in numerical order based upon the document*
 23 *identifier assigned to each document. For each docu-*
 24 *ment, the log shall contain—*

1 (A) a description of the document, includ-
 2 ing type of document, title of document, name
 3 and position or title of each author, addressee,
 4 and other recipient who was intended to receive
 5 a copy, document date, document purpose, and
 6 general subject matter;

7 (B) an explanation why the document or a
 8 portion of the document is privileged or subject
 9 to trade secret protection; and

10 (C) a statement whether any previous claim
 11 of privilege or trade secret was denied and, if so,
 12 in what proceeding.

13 (3) *PUBLIC INSPECTION.*—Within 5 days of re-
 14 ceipt of such a log, the Depository shall make it avail-
 15 able for public inspection and review.

16 (d) *DECLARATION OF COMPLIANCE.*—Each participat-
 17 ing tobacco product manufacturer shall submit to the Board
 18 a declaration, in accordance with the requirements of sec-
 19 tion 1746 of title 28, United States Code, by an individual
 20 with responsibility for the de novo review of documents,
 21 preparation of the privilege log, and knowledge of its con-
 22 tents. The declarant shall attest to the manufacturer's com-
 23 pliance with the requirements of this title pertaining to the
 24 review of documents and preparation of a privilege log.

1 **SEC. 905. DISCLOSURE BY THE DEPOSITORY.**

2 (a) *IN GENERAL.*—Within 30 days after receipt of a
3 document that is not subject to a claim of attorney-client
4 privilege, attorney work product, or trade secret protection,
5 the Depository shall make the document available to the
6 public using the Internet and other means.

7 (b) *EVIDENTIARY STATUS.*—The provisions of section
8 2116(a) and (b) of title 44, United States Code, apply to
9 records and documents submitted to the Depository in the
10 same manner and to the same extent as if they were records
11 submitted to the National Archives of the United States re-
12 quired by statute to be retained indefinitely.

13 (c) *APPLICATION OF CONFIDENTIALITY LAW.*—The re-
14 lease by the National Tobacco Documents Review Board es-
15 tablished under section 906 or any employee of the Deposi-
16 tory of any document recognized by the Depository as pro-
17 tected as a trade secret is a violation of section 1905 of
18 title 18, United States Code.

19 **SEC. 906. NATIONAL TOBACCO DOCUMENTS REVIEW**
20 **BOARD.**

21 (a) *ESTABLISHMENT.*—There shall be a National To-
22 bacco Documents Review Board consisting of 5 members,
23 qualified by training and experience to carry out the func-
24 tions of the Board, each of whom shall be appointed by the
25 President and with the advice and consent of the Senate.
26 Any person who is a citizen of the United States shall be

1 *eligible to serve as a member of the Board. Each Board*
2 *member shall be appointed for a term of 7 years and shall*
3 *be eligible for reappointment. The Board shall have the*
4 *power to hire such staff and establish such operating proce-*
5 *dures as it deems necessary to carry out its functions as*
6 *specified hereunder.*

7 (b) *RESPONSIBILITY FOR DEPOSITORY.—The Board*
8 *shall have the responsibility of maintaining the Depository*
9 *and shall, in consultation with the General Services Admin-*
10 *istration, establish guidelines and procedures for the estab-*
11 *lishment and operation of the Depository, including guide-*
12 *lines for the immediate disclosure of documents that are not*
13 *subject to unresolved claims of privilege or trade secrecy.*
14 *The Depository shall be open to the public and maintained*
15 *in a manner that permits it to be used as a resource for*
16 *litigants, public health groups, and persons with an interest*
17 *in tobacco industry records and research concerning smok-*
18 *ing and health, addiction or nicotine dependency, safer or*
19 *less hazardous cigarettes, and underage tobacco use and*
20 *marketing. The Board may grant reasonable extensions of*
21 *time for compliance upon a showing of good cause.*

22 (c) *PRIVILEGE.—The Board shall apply the attorney-*
23 *client privilege and the attorney work-product doctrine in*
24 *a manner consistent with Federal law.*

1 **SEC. 907. RESOLUTION OF DISPUTED PRIVILEGE AND**
2 **TRADE SECRET CLAIMS.**

3 (a) *IN GENERAL.*—The Board shall determine whether
4 to uphold or reject disputed claims of attorney client privi-
5 lege, attorney work product, or trade secret protection with
6 respect to documents submitted to the Depository. Any per-
7 son may petition the Board to resolve a claim that a docu-
8 ment submitted to the Depository may not be disclosed to
9 the public. Such a determination shall be made by a major-
10 ity of the Board, in writing, and shall be subject to judicial
11 review as specified in this title. All such determinations
12 shall be made solely on consideration of the subject docu-
13 ment and written submissions from the person claiming
14 that the document is privileged or protected by trade secrecy
15 and from any person seeking disclosure of the document.
16 The Board shall cause notice of the petition and the Board's
17 decision to be published in the Federal Register.

18 (b) *FINAL DECISION.*—The Board may uphold a claim
19 of privilege or protection in its entirety or, in its sole discre-
20 tion, it may redact that portion of a document that it deter-
21 mines is protected from public disclosure under subsection
22 (a). Any decision of the Board shall be final unless judicial
23 review is sought under section 908. In the event that judi-
24 cial review is so sought, the Board's decision shall be stayed
25 pending a final judicial decision.

1 **SEC. 908. APPEAL OF BOARD DECISION.**

2 (a) *PETITION; RIGHT OF APPEAL.*—Any person may
3 obtain judicial review of a final decision of the Board by
4 filing a petition for review with the United States Court
5 of Appeals for the Federal Circuit within 60 days after the
6 publication of such decision in the Federal Register. A copy
7 of the petition shall be transmitted by the Clerk of the Court
8 to the Board. The Board shall file in the court the record
9 of the proceedings on which the Board based its decision
10 (including any documents reviewed by the Board in cam-
11 era) as provided in section 2112 of title 28, United States
12 Code. Upon the filing of such petition, the court shall have
13 exclusive jurisdiction to affirm or set aside the Board's deci-
14 sion, except that until the filing of the record the Board
15 may modify or set aside its decision.

16 (b) *ADDITIONAL EVIDENCE AND ARGUMENTS.*—If the
17 any party applies to the court for leave to adduce addi-
18 tional evidence respecting the decision being reviewed and
19 shows to the satisfaction of the court that such additional
20 evidence or arguments are material and that there were rea-
21 sonable grounds for the failure to adduce such evidence or
22 arguments in the proceedings before the Board, the court
23 may order the Board to provide additional opportunity for
24 the presentation of evidence or arguments in such manner
25 and upon such terms as the court deems proper. The Board
26 may modify its findings or make new findings by reason

1 *of the additional evidence or arguments and shall file with*
 2 *the court such modified or new findings, and its rec-*
 3 *ommendation, if any, for the modification or setting aside*
 4 *of the decision being reviewed.*

5 (c) *STANDARD OF REVIEW; FINALITY OF JUDG-*
 6 *MENTS.—The Board’s findings of fact, if supported by sub-*
 7 *stantial evidence on the record taken as a whole, shall be*
 8 *conclusive. The court shall review the Board’s legal conclu-*
 9 *sions de novo. The judgment of the court affirming or set-*
 10 *ting aside the Board’s decision shall be final, subject to re-*
 11 *view by the Supreme Court of the United States upon cer-*
 12 *tiorari or certification, as provided in section 1254 of title*
 13 *28, United States Code.*

14 (d) *PUBLIC DISCLOSURE AFTER FINAL DECISION.—*
 15 *Within 30 days after a final decision that a document, as*
 16 *redacted by the Board or in its entirety, is not protected*
 17 *from disclosure by a claim of attorney-client privilege, at-*
 18 *torney work product, or trade secret protection, the Board*
 19 *shall direct the Depository to make the document available*
 20 *to the public. No Federal, Tribal, or State court shall have*
 21 *jurisdiction to review a claim of attorney-client privilege,*
 22 *attorney work product, or trade secret protection for a docu-*
 23 *ment that has lawfully been made available to the public*
 24 *under this subsection.*

1 (e) *EFFECT OF NON-DISCLOSURE DECISION ON JUDI-*
 2 *CIAL PROCEEDINGS.*—*The Board’s decision that a docu-*
 3 *ment is protected by attorney-client privilege, attorney work*
 4 *product, or trade secret protection is binding only for the*
 5 *purpose of protecting the document from disclosure by the*
 6 *Depository. The decision by the Board shall not be con-*
 7 *strued to prevent a document from being disclosed in a judi-*
 8 *cial proceeding.*

9 (f) *DISCLOSURE TO THE FOOD AND DRUG ADMINIS-*
 10 *TRATION.*—*Within 240 days after the date of enactment of*
 11 *this Act, each participating tobacco product manufacturer*
 12 *shall submit to the Food and Drug Administration the doc-*
 13 *uments identified in section 903(b) or 903(c), including*
 14 *documents for which trade secret protection is claimed, with*
 15 *the exception of any document for which privilege is*
 16 *claimed, and identified in accordance with section 904(a).*
 17 *Each such manufacturer shall provide the Administration*
 18 *with the privilege and trade secret logs identified under sec-*
 19 *tion 904(b). With respect to documents that are claimed to*
 20 *contain trade secret material, unless and until it is finally*
 21 *determined under this title, either through judicial review*
 22 *or because time for judicial review has expired, that such*
 23 *a document does not constitute or contain trade secret mate-*
 24 *rial, the Administration shall treat the document as a trade*
 25 *secret in accordance with section 708 of the Federal Food,*

1 *Drug, and Cosmetic Act (21 U.S.C. 379) and the regula-*
 2 *tions promulgated thereunder. Nothing herein shall limit*
 3 *the authority of the Administration to obtain and use, in*
 4 *accordance with any provision of the Federal Food, Drug,*
 5 *and Cosmetic Act and the regulations promulgated there-*
 6 *under, any document constituting or containing trade se-*
 7 *cret material. Documents and materials received by the Ad-*
 8 *ministration under this provision shall not be obtainable*
 9 *by or releasable to the public through section 552 of title*
 10 *5, United States Code, or any other provision of law, and*
 11 *the only recourse to obtain these documents shall be through*
 12 *the Board and Depository.*

13 **SEC. 909. MISCELLANEOUS.**

14 *The disclosure process in this title is not intended to*
 15 *affect the Federal Rules of Civil or Criminal Procedure or*
 16 *any Federal law which requires the disclosure of documents*
 17 *or which deals with attorney-client privilege, attorney work*
 18 *product, or trade secret protection.*

19 **SEC. 910. PENALTIES.**

20 *(a) GOOD FAITH REQUIREMENT.—Each participating*
 21 *tobacco product manufacturer must act in good faith in*
 22 *asserting claims of privilege or trade secret protection based*
 23 *on fact and law. If the Board determines that a participat-*
 24 *ing tobacco product manufacturer has not acted in good*
 25 *faith with full knowledge of the truth of the facts asserted*

1 *and with a reasonable basis under existing law, the manu-*
2 *facturer shall be assessed costs, which shall include the full*
3 *administrative costs of handling the claim of privilege, and*
4 *all attorneys' fees incurred by the Board and any party*
5 *contesting the privilege. The Board may also impose civil*
6 *penalties of up to \$10,000 per violation if it determines*
7 *that the manufacturer acted in bad faith in asserting a*
8 *privilege, or knowingly acted with the intent to delay, frus-*
9 *trate, defraud, or obstruct the Board's determination of*
10 *privilege or trade secret protection claims.*

11 (b) *FAILURE TO PRODUCE DOCUMENT.*—A failure by
12 *a participating tobacco product manufacturer to produce*
13 *indexes and documents in compliance with the schedule set*
14 *forth in this title, or with such extension as may be granted*
15 *by the Board, shall be punished by a civil penalty of up*
16 *to \$500 per violation. A separate violation occurs for each*
17 *document the manufacturer has failed to produce in a time-*
18 *ly manner. The maximum penalty under this subsection for*
19 *a related series of violations is \$10,000. In determining the*
20 *amount of any civil penalty, the Board shall consider the*
21 *number of documents, length of delay, any history of prior*
22 *violations, the ability to pay, and such other matters as*
23 *justice requires. Nothing in this title shall replace or super-*
24 *sede any criminal sanction under title 18, United States*
25 *Code, or any other provision of law.*

1 **SEC. 911. DEFINITIONS.**

2 *For the purposes of this title—*

3 (1) *DOCUMENT.—The term “document” includes*
4 *originals and drafts of any kind of written or graphic*
5 *matter, regardless of the manner of production or re-*
6 *production, of any kind or description, whether sent*
7 *or received or neither, and all copies thereof that are*
8 *different in any way from the original (whether by*
9 *interlineation, receipt stamp, notation, indication of*
10 *copies sent or received or otherwise) regardless of*
11 *whether confidential, privileged, or otherwise, includ-*
12 *ing any paper, book, account, photograph, blueprint,*
13 *drawing, agreement, contract, memorandum, adver-*
14 *tising material, letter, telegram, object, report, record,*
15 *transcript, study, note, notation, working paper,*
16 *intra-office communication, intra-department com-*
17 *munication, chart, minute, index sheet, routing sheet,*
18 *computer software, computer data, delivery ticket,*
19 *flow sheet, price list, quotation, bulletin, circular,*
20 *manual, summary, recording of telephone or other*
21 *conversation or of interviews, or of conferences, or any*
22 *other written, recorded, transcribed, punched, taped,*
23 *filmed, or graphic matter, regardless of the manner*
24 *produced or reproduced. Such term also includes any*
25 *tape, recording, videotape, computerization, or other*

1 *electronic recording, whether digital or analog or a*
 2 *combination thereof.*

3 (2) *TRADE SECRET.*—*The term “trade secret”*
 4 *means any commercially valuable plan, formula,*
 5 *process, or device that is used for making,*
 6 *compounding, processing, or preparing trade com-*
 7 *modities and that can be said to be the end-product*
 8 *of either innovation or substantial effort, for which*
 9 *there is a direct relationship between the plan, for-*
 10 *mula, process, or device and the productive process.*

11 (3) *CERTAIN ACTIONS DEEMED TO BE PROCEED-*
 12 *INGS.*—*Any action undertaken under this title, in-*
 13 *cluding the search, indexing, and production of docu-*
 14 *ments, is deemed to be a “proceeding” before the exec-*
 15 *utive branch of the United States.*

16 (4) *OTHER TERMS.*—*Any term used in this title*
 17 *that is defined in section 701 has the meaning given*
 18 *to it by that section.*

19 ***TITLE X—LONG-TERM ECONOMIC*** 20 ***ASSISTANCE FOR FARMERS***

21 ***SEC. 1001. SHORT TITLE.***

22 *This title may be cited as the “Long-Term Economic*
 23 *Assistance for Farmers Act” or the “LEAF Act”.*

24 ***SEC. 1002. DEFINITIONS.***

25 *In this title:*

1 (1) *PARTICIPATING TOBACCO PRODUCER.*—*The*
 2 *term “participating tobacco producer” means a quota*
 3 *holder, quota lessee, or quota tenant.*

4 (2) *QUOTA HOLDER.*—*The term “quota holder”*
 5 *means a producer that owns a farm for which a to-*
 6 *bacco farm marketing quota or farm acreage allot-*
 7 *ment was established under the Agricultural Adjust-*
 8 *ment Act of 1938 (7 U.S.C. 1281 et seq.) for any of*
 9 *the 1995, 1996, or 1997 crop years.*

10 (3) *QUOTA LESSEE.*—*The term “quota lessee”*
 11 *means—*

12 (A) *a producer that owns a farm that pro-*
 13 *duced tobacco pursuant to a lease and transfer*
 14 *to that farm of all or part of a tobacco farm*
 15 *marketing quota or farm acreage allotment es-*
 16 *tablished under the Agricultural Adjustment Act*
 17 *of 1938 (7 U.S.C. 1281 et seq.) for any of the*
 18 *1995, 1996, or 1997 crop years; or*

19 (B) *a producer that rented land from a*
 20 *farm operator to produce tobacco under a tobacco*
 21 *farm marketing quota or farm acreage allotment*
 22 *established under the Agricultural Adjustment*
 23 *Act of 1938 (7 U.S.C. 1281 et seq.) for any of*
 24 *the 1995, 1996, or 1997 crop years.*

1 (4) *QUOTA TENANT.*—*The term “quota tenant”*
2 *means a producer that—*

3 (A) *is the principal producer, as determined*
4 *by the Secretary, of tobacco on a farm where to-*
5 *bacco is produced pursuant to a tobacco farm*
6 *marketing quota or farm acreage allotment es-*
7 *tablished under the Agricultural Adjustment Act*
8 *of 1938 (7 U.S.C. 1281 et seq.) for any of the*
9 *1995, 1996, or 1997 crop years; and*

10 (B) *is not a quota holder or quota lessee.*

11 (5) *SECRETARY.*—*The term “Secretary”*
12 *means—*

13 (A) *in subtitles A and B, the Secretary of*
14 *Agriculture; and*

15 (B) *in section 1031, the Secretary of Labor.*

16 (6) *TOBACCO PRODUCT IMPORTER.*—*The term*
17 *“tobacco product importer” has the meaning given the*
18 *term “importer” in section 5702 of the Internal Reve-*
19 *nue Code of 1986.*

20 (7) *TOBACCO PRODUCT MANUFACTURER.*—

21 (A) *IN GENERAL.*—*The term “tobacco prod-*
22 *uct manufacturer” has the meaning given the*
23 *term “manufacturer of tobacco products” in sec-*
24 *tion 5702 of the Internal Revenue Code of 1986.*

1 (B) *EXCLUSION.*—*The term “tobacco prod-*
 2 *uct manufacturer” does not include a person*
 3 *that manufactures cigars or pipe tobacco.*

4 (8) *TOBACCO WAREHOUSE OWNER.*—*The term*
 5 *“tobacco warehouse owner” means a warehouseman*
 6 *that participated in an auction market (as defined in*
 7 *the first section of the Tobacco Inspection Act (7*
 8 *U.S.C. 511)) during the 1998 marketing year.*

9 **[(9) TRUST FUND.**—*The term “Trust Fund”*
 10 *means the Tobacco Community Revitalization Trust*
 11 *Fund established under section 1011.*

12 ***[Subtitle A—Tobacco Community***
 13 ***Revitalization Trust Fund***

14 ***[SEC. 1011. ESTABLISHMENT OF TRUST FUND.***

15 **[(a) IN GENERAL.**—*There is established in the Treas-*
 16 *ury of the United States a trust fund to be known as the*
 17 *“Tobacco Community Revitalization Trust Fund”, consist-*
 18 *ing of such amounts as may be appropriated or credited*
 19 *to the Trust Fund. The Trust Fund shall be administered*
 20 *by the Secretary.*

21 **[(b) TRANSFERS TO TRUST FUND.**—*There are appro-*
 22 *priated and transferred to the Trust Fund for each fiscal*
 23 *year—*

1 **[(1)** *amounts contributed by tobacco product*
 2 *manufacturers and tobacco product importers under*
 3 *section 1012; and*

4 **[(2)** *an amount from the National Tobacco Set-*
 5 *tlement Trust Fund established by section 401 equal*
 6 *to the aggregate amount of assessments under section*
 7 *1012 against participating tobacco manufacturers for*
 8 *that fiscal year.*

9 **[(c)** *REPAYABLE ADVANCES.—*

10 **[(1)** *AUTHORIZATION.—There are authorized to*
 11 *be appropriated to the Trust Fund, as repayable ad-*
 12 *vances, such sums as may from time to time be nec-*
 13 *essary to make expenditures under subsection (d).*

14 **[(2)** *REPAYMENT WITH INTEREST.—Repayable*
 15 *advances made to the Trust Fund shall be repaid, and*
 16 *interest on the advances shall be paid, to the general*
 17 *fund of the Treasury when the Secretary of the Treas-*
 18 *ury determines that moneys are available in the*
 19 *Trust Fund to make the payments.*

20 **[(3)** *RATE OF INTEREST.—Interest on an ad-*
 21 *vance made under this subsection shall be at a rate*
 22 *determined by the Secretary of Treasury (as of the*
 23 *close of the calendar month preceding the month in*
 24 *which the advance is made) that is equal to the cur-*
 25 *rent average market yield on outstanding marketable*

1 *obligations of the United States with remaining pe-*
 2 *riod to maturity comparable to the anticipated period*
 3 *during which the advance will be outstanding.*

4 **[(d) EXPENDITURES FROM TRUST FUND.—***Amounts*
 5 *in the Trust Fund shall be available for making expendi-*
 6 *tures after October 1, 1998, to meet those necessary obliga-*
 7 *tions of the Federal Government that are authorized to be*
 8 *paid under—*

9 **[(1)** *section 1021 for payments for lost tobacco*
 10 *quota for each of fiscal years 1999 through 2023, but*
 11 *not to exceed \$1,650,000,000 for any fiscal year ex-*
 12 *cept to the extent the payments are made in accord-*
 13 *ance with subsection (d)(12) or (e)(9) of section 1021;*

14 **[(2)** *section 1022 for industry payments for all*
 15 *costs of the Department of Agriculture associated with*
 16 *the production of tobacco;*

17 **[(3)** *section 1023 for tobacco community eco-*
 18 *nomie development grants, but not to exceed—*

19 **[(A)** *\$375,000,000 for each of fiscal years*
 20 *1999 through 2008, less any amount required to*
 21 *be paid under section 1022 for the fiscal year;*
 22 *and*

23 **[(B)** *\$450,000,000 for each of fiscal year*
 24 *2009 through 2023, less any amount required to*

1 *be paid under section 1022 during the fiscal*
 2 *year;*

3 **[(4)** *section 1031 for assistance provided under*
 4 *the tobacco worker transition program, but not to ex-*
 5 *ceed \$25,000,000 for any fiscal year; and*

6 **[(5)** *subpart 9 of part A of title IV of the Higher*
 7 *Education Act of 1965 for farmer opportunity grants,*
 8 *but not to exceed—*

9 **[(A)** *\$42,500,000 for each of the academic*
 10 *years 1999–2000 through 2003–2004;*

11 **[(B)** *\$50,000,000 for each of the academic*
 12 *years 2004–2005 through 2008–2009;*

13 **[(C)** *\$57,500,000 for each of the academic*
 14 *years 2009–2010 through 2013–2014;*

15 **[(D)** *\$65,000,000 for each of the academic*
 16 *years 2014–2015 through 2018–2019; and*

17 **[(E)** *\$72,500,000 for each of the academic*
 18 *years 2019–2020 through 2023–2024.*

19 **[(e)** *BUDGETARY TREATMENT.—This section con-*
 20 *stitutes budget authority in advance of appropriations Acts*
 21 *and represents the obligation of the Federal Government to*
 22 *provide payments to States and eligible persons in accord-*
 23 *ance with this title.*

1 **【SEC. 1012. CONTRIBUTIONS BY TOBACCO PRODUCT MANU-**
 2 **FACTURERS AND IMPORTERS.**

3 **【(a) DEFINITION OF MARKET SHARE.**—*In this sec-*
 4 *tion, the term “market share” means the ratio of—*

5 **【(1)** *the tax liability of a tobacco product manu-*
 6 *facturer or tobacco product importer for a calendar*
 7 *year under section 5703 of the Internal Revenue Code*
 8 *of 1986; to*

9 **【(2)** *the tax liability of all tobacco product man-*
 10 *ufacturers or tobacco product importers for the cal-*
 11 *endar year under section 5703 of the Internal Reve-*
 12 *nue Code of 1986.*

13 **【(b) DETERMINATIONS.**—*Not later than September 30*
 14 *of each fiscal year, the Secretary of the Treasury shall—*

15 **【(1)** *determine—*

16 **【(A)** *the market share of each tobacco prod-*
 17 *uct manufacturer or tobacco product importer*
 18 *during the most recent calendar year;*

19 **【(B)** *the total amount of assessments pay-*
 20 *able for the subsequent fiscal year under sub-*
 21 *section (c); and*

22 **【(C)** *the amount of an assessment payable*
 23 *by the tobacco product manufacturer or tobacco*
 24 *product importer for the fiscal year under sub-*
 25 *section (d); and*

1 **[(2)** *notify each tobacco product manufacturer*
 2 *and tobacco product importer of the determinations*
 3 *made under paragraph (1) with respect to the manu-*
 4 *facturer or importer.*

5 **[(c) TOTAL AMOUNT OF ASSESSMENTS.—**

6 **[(1) IN GENERAL.—***The total amount of assess-*
 7 *ments payable by all tobacco product manufacturers*
 8 *and tobacco product importers into the Trust Fund*
 9 *for a fiscal year shall be equal to—*

10 **[(A)** *the amount of the contribution to the*
 11 *Trust Fund for the fiscal year required under*
 12 *paragraph (2); less*

13 **[(B)** *any amount made available during*
 14 *the preceding fiscal year to the Trust Fund out*
 15 *of funds transferred from National Tobacco Set-*
 16 *tlement Trust Fund under section 1011(b)(2).*

17 **[(2) TRUST FUND CONTRIBUTIONS.—***The*
 18 *amount of the contribution to the Trust Fund shall*
 19 *be—*

20 **[(A)** *\$2,100,000,000 for each of fiscal years*
 21 *1999 through 2008;*

22 **[(B)** *\$500,000,000 for each of fiscal years*
 23 *2009 through 2023; and*

1 **[(C)** *for fiscal year 2024 and each subse-*
 2 *quent fiscal year, the amount payable under sec-*
 3 *tion 1022.*

4 **[(d) INDIVIDUAL AMOUNT OF ASSESSMENTS.—***The*
 5 *amount of an assessment payable by each tobacco product*
 6 *manufacturer and tobacco product importer into the Trust*
 7 *Fund for a fiscal year shall be equal to the product obtained*
 8 *by multiplying—*

9 **[(1)** *the total amount of assessments payable by*
 10 *all tobacco product manufacturers and tobacco prod-*
 11 *uct importers for the fiscal year under subsection (c);*
 12 *and*

13 **[(2)** *the market share of the tobacco product*
 14 *manufacturer or tobacco product importer during the*
 15 *most recent calendar year determined under sub-*
 16 *section (b)(1)(A).*

17 **[(e) CREDIT FOR PAYMENTS BY PARTICIPATING TO-**
 18 *BACCO PRODUCT MANUFACTURERS.—There shall be allowed*
 19 *as a credit against the amount of any assessment under*
 20 *this section for a participating tobacco product manufac-*
 21 *turer an amount equal to the amount paid by that manu-*
 22 *facturer under section 403 of this Act (other than as penalty*
 23 *or interest) for the calendar year ending in that fiscal*
 24 *year.]*

***Subtitle B—Tobacco Market
Transition Assistance***

SEC. 1021. PAYMENTS FOR LOST TOBACCO QUOTA.

(a) *IN GENERAL.*—Beginning with the 1999 marketing year, the Secretary shall make payments for lost tobacco quota to eligible quota holders, quota lessees, and quota tenants as reimbursement for lost tobacco quota as a result of a decrease in demand for domestically produced tobacco.

(b) *ELIGIBILITY.*—To be eligible to receive payments under this section, a quota holder, quota lessee, or quota tenant shall—

(1) prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require, including information sufficient to make the demonstration required under paragraph (2); and

(2) demonstrate to the satisfaction of the Secretary that, with respect to the 1997 marketing year—

(A) the producer was a quota holder and realized income from the production of tobacco through—

(i) the active production of tobacco;

(ii) the lease and transfer of tobacco quota to another farm;

1 (iii) the rental of all or part of the
2 farm of the quota holder, including the right
3 to produce tobacco, to another tobacco pro-
4 ducer; or

5 (iv) the hiring of a quota tenant to
6 produce tobacco;

7 (B) the producer was a quota lessee; or

8 (C) the producer was a quota tenant.

9 (c) *BASE QUOTA LEVEL.*—

10 (1) *IN GENERAL.*—The Secretary shall deter-
11 mine, for each quota holder, quota lessee, and quota
12 tenant, the base quota level for the 1995 through 1997
13 marketing years.

14 (2) *QUOTA HOLDERS.*—The base quota level for
15 a quota holder shall be equal to the average tobacco
16 farm marketing quota established for the farm owned
17 by the quota holder for the 1995 through 1997 mar-
18 keting years.

19 (3) *QUOTA LESSEES.*—The base quota level for a
20 quota lessee shall be equal to—

21 (A) 50 percent of the average number of
22 pounds of tobacco quota established for a farm
23 for the 1995 through 1997 marketing years—

24 (i) that was leased and transferred to
25 a farm owned by the quota lessee; or

1 (ii) for which the rights to produce the
2 tobacco were rented to the quota lessee; less
3 (B) 25 percent of the average number of
4 pounds of tobacco quota described in subpara-
5 graph (A) for which a quota tenant was the
6 principal producer of the tobacco quota.

7 (4) QUOTA TENANTS.—The base quota level for a
8 quota tenant shall be equal to the sum of—

9 (A) 50 percent of the average number of
10 pounds of tobacco quota established for a farm
11 for the 1995 through 1997 marketing years—

12 (i) that was owned by a quota holder;
13 and

14 (ii) for which the quota tenant was the
15 principal producer of the tobacco on the
16 farm; and

17 (B) 25 percent of the average number of
18 pounds of tobacco quota for the 1995 through
19 1997 marketing years—

20 (i)(I) that was leased and transferred
21 to a farm owned by the quota lessee; or

22 (II) for which the rights to produce the
23 tobacco were rented to the quota lessee; and

1 (ii) for which the quota tenant was the
2 principal producer of the tobacco on the
3 farm.

4 (5) *MARKETING QUOTAS OTHER THAN POUND-*
5 *AGE QUOTAS.—*

6 (A) *IN GENERAL.—For each type of tobacco*
7 *for which there is a marketing quota or allot-*
8 *ment (on an acreage basis), the base quota level*
9 *for each quota holder, quota lessee, or quota ten-*
10 *ant shall be determined in accordance with this*
11 *subsection (based on a poundage conversion) by*
12 *multiplying—*

13 (i) *the average tobacco farm marketing*
14 *quota or allotment for the 1995 through*
15 *1997 marketing years; and*

16 (ii) *the average yield per acre for the*
17 *farm for the type of tobacco for the market-*
18 *ing years.*

19 (B) *YIELDS NOT AVAILABLE.—If the average*
20 *yield per acre is not available for a farm, the*
21 *Secretary shall calculate the base quota for the*
22 *quota holder, quota lessee, or quota tenant (based*
23 *on a poundage conversion) by determining the*
24 *amount equal to the product obtained by mul-*
25 *tiplying—*

1 (i) the average tobacco farm marketing
2 quota or allotment for the 1995 through
3 1997 marketing years; and

4 (ii) the average county yield per acre
5 for the county in which the farm is located
6 for the type of tobacco for the marketing
7 years.

8 (d) *PAYMENTS FOR LOST TOBACCO QUOTA FOR TYPES*
9 *OF TOBACCO OTHER THAN FLUE-CURED TOBACCO.—*

10 (1) *ALLOCATION OF FUNDS.—Of the amounts*
11 *made available [under section 1011(d)(1)] out of*
12 ***the National Tobacco Settlement Trust***
13 ***Fund** for payments for lost tobacco quota, the Sec-*
14 *retary shall make available for payments under this*
15 *subsection an amount that bears the same ratio to the*
16 *amounts made available as—*

17 (A) *the sum of all national marketing*
18 *quotas for all types of tobacco other than flue-*
19 *cured tobacco during the 1995 through 1997*
20 *marketing years; bears to*

21 (B) *the sum of all national marketing*
22 *quotas for all types of tobacco during the 1995*
23 *through 1997 marketing years.*

24 (2) *OPTION TO RELINQUISH QUOTA.—*

1 (A) *IN GENERAL.*—*Each quota holder shall*
 2 *be given the option to relinquish the farm mar-*
 3 *keting quota or farm acreage allotment of the*
 4 *quota holder in exchange for a payment made*
 5 *under paragraph (3).*

6 (B) *NOTIFICATION.*—*A quota holder shall*
 7 *give notification of the intention of the quota*
 8 *holder to exercise the option at such time and in*
 9 *such manner as the Secretary may require, but*
 10 *not later than January 15, 1999.*

11 (3) *PAYMENTS FOR LOST TOBACCO QUOTA TO*
 12 *QUOTA HOLDERS EXERCISING OPTIONS TO RELIN-*
 13 *QUISH QUOTA.*—

14 (A) *IN GENERAL.*—*Subject to subparagraph*
 15 *(E), for each of fiscal years 1999 through 2008,*
 16 *the Secretary shall make annual payments for*
 17 *lost tobacco quota to each quota holder that has*
 18 *relinquished the farm marketing quota or farm*
 19 *acreage allotment of the quota holder under*
 20 *paragraph (2).*

21 (B) *AMOUNT.*—*The amount of a payment*
 22 *made to a quota holder described in subpara-*
 23 *graph (A) for a marketing year shall equal $\frac{1}{10}$*
 24 *of the lifetime limitation established under sub-*
 25 *paragraph (E).*

1 (C) *TIMING.*—*The Secretary shall begin*
 2 *making annual payments under this paragraph*
 3 *for the marketing year in which the farm mar-*
 4 *keting quota or farm acreage allotment is relin-*
 5 *quished.*

6 (D) *ADDITIONAL PAYMENTS.*—*The Sec-*
 7 *retary may increase annual payments under this*
 8 *paragraph in accordance with paragraph (7)(E)*
 9 *to the extent that funding is available.*

10 (E) *LIFETIME LIMITATION ON PAYMENTS.*—
 11 *The total amount of payments made under this*
 12 *paragraph to a quota holder shall not exceed the*
 13 *product obtained by multiplying the base quota*
 14 *level for the quota holder by \$8 per pound.*

15 (4) *REISSUANCE OF QUOTA.*—

16 (A) *REALLOCATION TO LESSEE OR TEN-*
 17 *ANT.*—*If a quota holder exercises an option to re-*
 18 *linquish a tobacco farm marketing quota or farm*
 19 *acreage allotment under paragraph (2), a quota*
 20 *lessee or quota tenant that was the primary pro-*
 21 *ducer during the 1997 marketing year of tobacco*
 22 *pursuant to the farm marketing quota or farm*
 23 *acreage allotment, as determined by the Sec-*
 24 *retary, shall be given the option of having an al-*
 25 *lotment of the farm marketing quota or farm*

1 *acreage allotment reallocated to a farm owned by*
 2 *the quota lessee or quota tenant.*

3 *(B) CONDITIONS FOR REALLOCATION.—*

4 *(i) TIMING.—A quota lessee or quota*
 5 *tenant that is given the option of having an*
 6 *allotment of a farm marketing quota or*
 7 *farm acreage allotment reallocated to a*
 8 *farm owned by the quota lessee or quota*
 9 *tenant under subparagraph (A) shall have 1*
 10 *year from the date on which a farm market-*
 11 *ing quota or farm acreage allotment is re-*
 12 *linquished under paragraph (2) to exercise*
 13 *the option.*

14 *(ii) LIMITATION ON ACREAGE ALLOT-*
 15 *MENT.—In the case of a farm acreage allot-*
 16 *ment, the acreage allotment determined for*
 17 *any farm subsequent to any reallocation*
 18 *under subparagraph (A) shall not exceed 50*
 19 *percent of the acreage of cropland of the*
 20 *farm owned by the quota lessee or quota*
 21 *tenant.*

22 *(iii) LIMITATION ON MARKETING*
 23 *QUOTA.—In the case of a farm marketing*
 24 *quota, the marketing quota determined for*
 25 *any farm subsequent to any reallocation*

under subparagraph (A) shall not exceed an amount determined by multiplying—

(I) the average county farm yield, as determined by the Secretary; and

(II) 50 percent of the acreage of cropland of the farm owned by the quota lessee or quota tenant.

(C) *ELIGIBILITY OF LESSEE OR TENANT FOR PAYMENTS.*—If a farm marketing quota or farm acreage allotment is reallocated to a quota lessee or quota tenant under subparagraph (A)—

(i) the quota lessee or quota tenant shall not be eligible for any additional payments under paragraph (5) or (6) as a result of the reallocation; and

(ii) the base quota level for the quota lessee or quota tenant shall not be increased as a result of the reallocation.

(D) *REALLOCATION TO QUOTA HOLDERS WITHIN SAME COUNTY OR STATE.*—

(i) *IN GENERAL.*—Except as provided in clause (ii), if there was no quota lessee or quota tenant for the farm marketing quota or farm acreage allotment for a type of tobacco, or if no quota lessee or quota

1 *tenant exercises an option of having an al-*
 2 *lotment of the farm marketing quota or*
 3 *farm acreage allotment for a type of tobacco*
 4 *reallocated, the Secretary shall reapportion*
 5 *the farm marketing quota or farm acreage*
 6 *allotment among the remaining quota hold-*
 7 *ers for the type of tobacco within the same*
 8 *county.*

9 (ii) *CROSS-COUNTY LEASING.—In a*
 10 *State in which cross-county leasing is au-*
 11 *thorized pursuant to section 319(l) of the*
 12 *Agricultural Adjustment Act of 1938 (7*
 13 *U.S.C. 1314e(l)), the Secretary shall re-*
 14 *apportion the farm marketing quota among*
 15 *the remaining quota holders for the type of*
 16 *tobacco within the same State.*

17 (iii) *ELIGIBILITY OF QUOTA HOLDER*
 18 *FOR PAYMENTS.—If a farm marketing*
 19 *quota is reapportioned to a quota holder*
 20 *under this subparagraph—*

21 *(I) the quota holder shall not be*
 22 *eligible for any additional payments*
 23 *under paragraph (5) or (6) as a result*
 24 *of the reapportionment; and*

1 (II) the base quota level for the
2 quota holder shall not be increased as
3 a result of the reapportionment.

4 (E) SPECIAL RULE FOR TENANT OF LEASED
5 TOBACCO.—If a quota holder exercises an option
6 to relinquish a tobacco farm marketing quota or
7 farm acreage allotment under paragraph (2), the
8 farm marketing quota or farm acreage allotment
9 shall be divided evenly between, and the option
10 of reallocating the farm marketing quota or farm
11 acreage allotment shall be offered in equal por-
12 tions to, the quota lessee and to the quota tenant,
13 if—

14 (i) during the 1997 marketing year,
15 the farm marketing quota or farm acreage
16 allotment was leased and transferred to a
17 farm owned by the quota lessee; and

18 (ii) the quota tenant was the primary
19 producer, as determined by the Secretary, of
20 tobacco pursuant to the farm marketing
21 quota or farm acreage allotment.

22 (5) PAYMENTS FOR LOST TOBACCO QUOTA TO
23 QUOTA HOLDERS.—

24 (A) IN GENERAL.—Except as otherwise pro-
25 vided in this subsection, during any marketing

year in which the national marketing quota for a type of tobacco is less than the average national marketing quota for the 1995 through 1997 marketing years, the Secretary shall make payments for lost tobacco quota to each quota holder that is eligible under subsection (b), and has not exercised an option to relinquish a tobacco farm marketing quota or farm acreage allotment under paragraph (2), in an amount that is equal to the product obtained by multiplying—

(i) the number of pounds by which the basic farm marketing quota (or poundage conversion) is less than the base quota level for the quota holder; and

(ii) \$4 per pound.

(B) POUNDAGE CONVERSION FOR MARKETING QUOTAS OTHER THAN POUNDAGE QUOTAS.—

(i) IN GENERAL.—For each type of tobacco for which there is a marketing quota or allotment (on an acreage basis), the poundage conversion for each quota holder during a marketing year shall be determined by multiplying—

1 (I) the basic farm acreage allot-
 2 ment for the farm for the marketing
 3 year; and

4 (II) the average yield per acre for
 5 the farm for the type of tobacco.

6 (ii) YIELD NOT AVAILABLE.—If the av-
 7 erage yield per acre is not available for a
 8 farm, the Secretary shall calculate the
 9 poundage conversion for each quota holder
 10 during a marketing year by multiplying—

11 (I) the basic farm acreage allot-
 12 ment for the farm for the marketing
 13 year; and

14 (II) the average county yield per
 15 acre for the county in which the farm
 16 is located for the type of tobacco.

17 (6) PAYMENTS FOR LOST TOBACCO QUOTA TO
 18 QUOTA LESSEES AND QUOTA TENANTS.—Except as
 19 otherwise provided in this subsection, during any
 20 marketing year in which the national marketing
 21 quota for a type of tobacco is less than the average
 22 national marketing quota for the type of tobacco for
 23 the 1995 through 1997 marketing years, the Secretary
 24 shall make payments for lost tobacco quota to each
 25 quota lessee and quota tenant that is eligible under

1 subsection (b) in an amount that is equal to the prod-
 2 uct obtained by multiplying—

3 (A) the percentage by which the national
 4 marketing quota for the type of tobacco is less
 5 than the average national marketing quota for
 6 the type of tobacco for the 1995 through 1997
 7 marketing years;

8 (B) the base quota level for the quota lessee
 9 or quota tenant; and

10 (C) \$4 per pound.

11 (7) *LIFETIME LIMITATION ON PAYMENTS.*—*Ex-*
 12 *cept as otherwise provided in this subsection, the total*
 13 *amount of payments made under this subsection to a*
 14 *quota holder, quota lessee, or quota tenant during the*
 15 *lifetime of the quota holder, quota lessee, or quota ten-*
 16 *ant shall not exceed the product obtained by multiply-*
 17 *ing—*

18 (A) the base quota level for the quota holder,
 19 quota lessee, or quota tenant; and

20 (B) \$8 per pound.

21 (8) *LIMITATIONS ON AGGREGATE ANNUAL PAY-*
 22 *MENTS.*—

23 (A) *IN GENERAL.*—*Except as otherwise pro-*
 24 *vided in this paragraph, the total amount pay-*
 25 *able under this subsection for any marketing*

1 *year shall not exceed the amount made available*
2 *under paragraph (1).*

3 (B) *ACCELERATED PAYMENTS.*—*Paragraph*
4 *(1) shall not apply if accelerated payments for*
5 *lost tobacco quota are made in accordance with*
6 *paragraph (12).*

7 (C) *REDUCTIONS.*—*If the sum of the*
8 *amounts determined under paragraphs (3), (5),*
9 *and (6) for a marketing year exceeds the amount*
10 *made available under paragraph (1), the Sec-*
11 *retary shall make a pro rata reduction in the*
12 *amounts payable under paragraphs (5) and (6)*
13 *to quota holders, quota lessees, and quota tenants*
14 *under this subsection to ensure that the total*
15 *amount of payments for lost tobacco quota does*
16 *not exceed the amount made available under*
17 *paragraph (1).*

18 (D) *ROLLOVER OF PAYMENTS FOR LOST TO-*
19 *BACCO QUOTA.*—*Subject to subparagraph (A), if*
20 *the Secretary makes a reduction in accordance*
21 *with subparagraph (C), the amount of the reduc-*
22 *tion shall be applied to the next marketing year*
23 *and added to the payments for lost tobacco quota*
24 *for the marketing year.*

1 (E) *ADDITIONAL PAYMENTS TO QUOTA*
 2 *HOLDERS EXERCISING OPTION TO RELINQUISH*
 3 *QUOTA.—If the amount made available under*
 4 *paragraph (1) exceeds the sum of the amounts*
 5 *determined under paragraphs (3), (5), and (6)*
 6 *for a marketing year, the Secretary shall distrib-*
 7 *ute the amount of the excess pro rata to quota*
 8 *holders that have exercised an option to relin-*
 9 *quish a tobacco farm marketing quota or farm*
 10 *acreage allotment under paragraph (2) by in-*
 11 *creasing the amount payable to each such holder*
 12 *under paragraph (3).*

13 (9) *SUBSEQUENT SALE AND TRANSFER OF*
 14 *QUOTA.—Effective beginning with the 1999 marketing*
 15 *year, on the sale and transfer of a farm marketing*
 16 *quota or farm acreage allotment under section 316(g)*
 17 *or 319(g) of the Agricultural Adjustment Act of 1938*
 18 *(7 U.S.C. 1314b(g), 1314e(g))—*

19 (A) *the person that sold and transferred the*
 20 *quota or allotment shall have—*

21 (i) *the base quota level attributable to*
 22 *the person reduced by the base quota level*
 23 *attributable to the quota that is sold and*
 24 *transferred; and*

1 (ii) the lifetime limitation on pay-
 2 ments established under paragraph (7) at-
 3 tributable to the person reduced by the
 4 product obtained by multiplying—

5 (I) the base quota level attrib-
 6 utable to the quota; and

7 (II) \$8 per pound; and

8 (B) if the quota or allotment has never been
 9 relinquished by a previous quota holder under
 10 paragraph (2), the person that acquired the
 11 quota shall have—

12 (i) the base quota level attributable to
 13 the person increased by the base quota level
 14 attributable to the quota that is sold and
 15 transferred; and

16 (ii) the lifetime limitation on pay-
 17 ments established under paragraph (7) at-
 18 tributable to the person—

19 (I) increased by the product ob-
 20 tained by multiplying—

21 (aa) the base quota level at-
 22 tributable to the quota; and

23 (bb) \$8 per pound; but

24 (II) decreased by any payments
 25 under paragraph (5) for lost tobacco

1 *quota previously made that are attrib-*
 2 *utable to the quota that is sold and*
 3 *transferred.*

4 (10) *SALE OR TRANSFER OF FARM.—On the sale*
 5 *or transfer of ownership of a farm that is owned by*
 6 *a quota holder, the base quota level established under*
 7 *subsection (c), the right to payments under paragraph*
 8 *(5), and the lifetime limitation on payments estab-*
 9 *lished under paragraph (7) shall transfer to the new*
 10 *owner of the farm to the same extent and in the same*
 11 *manner as those provisions applied to the previous*
 12 *quota holder.*

13 (11) *DEATH OF QUOTA LESSEE OR QUOTA TEN-*
 14 *ANT.—If a quota lessee or quota tenant that is enti-*
 15 *tled to payments under this subsection dies and is*
 16 *survived by a spouse or 1 or more dependents, the*
 17 *right to receive the payments shall transfer to the sur-*
 18 *viving spouse or, if there is no surviving spouse, to*
 19 *the surviving dependents in equal shares.*

20 (12) *ACCELERATION OF PAYMENTS.—*

21 (A) *IN GENERAL.—On the occurrence of any*
 22 *of the events described in subparagraph (B), the*
 23 *Secretary shall make an accelerated lump sum*
 24 *payment for lost tobacco quota as established*
 25 *under paragraphs (5) and (6) to each quota*

1 holder, quota lessee, and quota tenant for any af-
 2 fected type of tobacco in accordance with sub-
 3 paragraph (C).

4 (B) *TRIGGERING EVENTS.*—*The Secretary*
 5 *shall make accelerated payments under subpara-*
 6 *graph (A) if after the date of enactment of this*
 7 *Act—*

8 (i) *subject to subparagraph (D), for 3*
 9 *consecutive marketing years, the national*
 10 *marketing quota or national acreage allot-*
 11 *ment for a type of tobacco is less than 50*
 12 *percent of the national marketing quota or*
 13 *national acreage allotment for the type of*
 14 *tobacco for the 1998 marketing year; or*

15 (ii) *Congress repeals or makes ineffec-*
 16 *tive, directly or indirectly, any provision*
 17 *of—*

18 (I) *section 316 of the Agricultural*
 19 *Adjustment Act of 1938 (7 U.S.C.*
 20 *1314b);*

21 (II) *section 319 of the Agricul-*
 22 *tural Adjustment Act of 1938 (7 U.S.C.*
 23 *1314e);*

24 (III) *section 106 of the Agricul-*
 25 *tural Act of 1949 (7 U.S.C. 1445);*

1 (IV) section 106A of the Agricul-
 2 tural Act of 1949 (7 U.S.C. 1445–1);
 3 or

4 (V) section 106B of the Agricul-
 5 tural Act of 1949 (7 U.S.C. 1445–2).

6 (C) *AMOUNT*.—The amount of the acceler-
 7 ated payments made to each quota holder, quota
 8 lessee, and quota tenant under this subsection
 9 shall be equal to—

10 (i) the amount of the lifetime limita-
 11 tion established for the quota holder, quota
 12 lessee, or quota tenant under paragraph (7);
 13 less

14 (ii) any payments for lost tobacco
 15 quota received by the quota holder, quota
 16 lessee, or quota tenant before the occurrence
 17 of any of the events described in subpara-
 18 graph (B).

19 (D) *REFERENDUM VOTE NOT A TRIGGERING*
 20 *EVENT*.—A referendum vote of producers for any
 21 type of tobacco that results in the national mar-
 22 keting quota or national acreage allotment not
 23 being in effect for the type of tobacco shall not
 24 be considered a triggering event under this para-
 25 graph.

1 (13) *BAN ON SUBSEQUENT SALE OR LEASING OF*
 2 *FARM MARKETING QUOTA OR FARM ACREAGE ALLOT-*
 3 *MENT TO QUOTA HOLDERS EXERCISING OPTION TO*
 4 *RELINQUISH QUOTA.*—No quota holder that exercises
 5 *the option to relinquish a farm marketing quota or*
 6 *farm acreage allotment for any type of tobacco under*
 7 *paragraph (2) shall be eligible to acquire a farm mar-*
 8 *keting quota or farm acreage allotment for the type*
 9 *of tobacco, or to obtain the lease or transfer of a farm*
 10 *marketing quota or farm acreage allotment for the*
 11 *type of tobacco, for a period of 25 crop years after the*
 12 *date on which the quota or allotment was relin-*
 13 *quished.*

14 (e) *PAYMENTS FOR LOST TOBACCO QUOTA FOR FLUE-*
 15 *CURED TOBACCO.*—

16 (1) *ALLOCATION OF FUNDS.*—Of the amounts
 17 made available **【under section 1011(d)(1)】** **out of**
 18 ***the National Tobacco Settlement Trust***
 19 ***Fund*** for payments for lost tobacco quota, the Sec-
 20 retary shall make available for payments under this
 21 subsection an amount that bears the same ratio to the
 22 amounts made available as—

23 (A) *the sum of all national marketing*
 24 *quotas for flue-cured tobacco during the 1995*
 25 *through 1997 marketing years; bears to*

1 (B) *the sum of all national marketing*
 2 *quotas for all types of tobacco during the 1995*
 3 *through 1997 marketing years.*

4 (2) *RELINQUISHMENT OF QUOTA.—*

5 (A) *IN GENERAL.—Each quota holder of*
 6 *flue-cured tobacco during the 1998 marketing*
 7 *year shall relinquish the farm marketing quota*
 8 *or farm acreage allotment in exchange for a pay-*
 9 *ment made under paragraph (3) or (4).*

10 (B) *NOTIFICATION.—The Secretary shall*
 11 *notify the quota holders of the relinquishment of*
 12 *their quota or allotment at such time and in*
 13 *such manner as the Secretary may require, but*
 14 *not later than November 15, 1998.*

15 (3) *PAYMENTS FOR LOST FLUE-CURED TOBACCO*
 16 *QUOTA TO QUOTA HOLDERS THAT RELINQUISH*
 17 *QUOTA.—*

18 (A) *IN GENERAL.—For each of fiscal years*
 19 *1999 through 2008, the Secretary shall make an-*
 20 *ual payments for lost flue-cured tobacco to each*
 21 *quota holder that has relinquished the farm mar-*
 22 *keting quota or farm acreage allotment of the*
 23 *quota holder under paragraph (2).*

24 (B) *AMOUNT.—The amount of a payment*
 25 *made to a quota holder described in subpara-*

1 *graph (A) for a marketing year shall equal $\frac{1}{10}$*
 2 *of the lifetime limitation established under para-*
 3 *graph (6).*

4 (C) *TIMING.*—*The Secretary shall begin*
 5 *making annual payments under this paragraph*
 6 *for the marketing year in which the farm mar-*
 7 *keting quota or farm acreage allotment is relin-*
 8 *quished.*

9 (D) *ADDITIONAL PAYMENTS.*—*The Sec-*
 10 *retary may increase annual payments under this*
 11 *paragraph in accordance with paragraph (7)(E)*
 12 *to the extent that funding is available.*

13 (4) *PAYMENTS FOR LOST FLUE-CURED TOBACCO*
 14 *QUOTA TO QUOTA LESSEES AND QUOTA TENANTS*
 15 *THAT HAVE NOT RELINQUISHED PERMITS.—*

16 (A) *IN GENERAL.*—*Except as otherwise pro-*
 17 *vided in this subsection, during any marketing*
 18 *year in which the national marketing quota for*
 19 *flue-cured tobacco is less than the average na-*
 20 *tional marketing quota for the 1995 through*
 21 *1997 marketing years, the Secretary shall make*
 22 *payments for lost tobacco quota to each quota*
 23 *lessee or quota tenant that—*

24 (i) *is eligible under subsection (b);*

1 (ii) has been issued an individual to-
 2 bacco production permit under section
 3 317A(b) of the Agricultural Adjustment Act
 4 of 1938; and

5 (iii) has not exercised an option to re-
 6 linquish the permit.

7 (B) AMOUNT.—The amount of a payment
 8 made to a quota holder described in subpara-
 9 graph (A) for a marketing year shall be equal to
 10 the product obtained by multiplying—

11 (i) the number of pounds by which the
 12 individual marketing limitation established
 13 for the permit is less than twice the base
 14 quota level for the quota holder; and

15 (ii) \$2 per pound.

16 (5) PAYMENTS FOR LOST FLUE-CURED TOBACCO
 17 QUOTA TO QUOTA LESSEES AND QUOTA TENANTS
 18 THAT HAVE RELINQUISHED PERMITS.—

19 (A) IN GENERAL.—For each of fiscal years
 20 1999 through 2008, the Secretary shall make an-
 21 nual payments for lost flue-cured tobacco quota
 22 to each quota lessee and quota tenant that has
 23 relinquished an individual tobacco production
 24 permit under section 317A(b)(5) of the Agricul-
 25 tural Adjustment Act of 1938.

1 (B) *AMOUNT.*—*The amount of a payment*
 2 *made to a quota holder described in subpara-*
 3 *graph (A) for a marketing year shall be equal to*
 4 *$\frac{1}{10}$ of the lifetime limitation established under*
 5 *paragraph (6).*

6 (C) *TIMING.*—*The Secretary shall begin*
 7 *making annual payments under this paragraph*
 8 *for the marketing year in which the individual*
 9 *tobacco production permit is relinquished.*

10 (D) *ADDITIONAL PAYMENTS.*—*The Sec-*
 11 *retary may increase annual payments under this*
 12 *paragraph in accordance with paragraph (7)(E)*
 13 *to the extent that funding is available.*

14 (E) *PROHIBITION AGAINST PERMIT EXPAN-*
 15 *SION.*—*A quota lessee or quota tenant that re-*
 16 *ceives a payment under this paragraph shall be*
 17 *ineligible to receive any new or increased tobacco*
 18 *production permit from the county production*
 19 *pool established under section 317A(b)(8) of the*
 20 *Agricultural Adjustment Act of 1938.*

21 (6) *LIFETIME LIMITATION ON PAYMENTS.*—*Ex-*
 22 *cept as otherwise provided in this subsection, the total*
 23 *amount of payments made under this subsection to a*
 24 *quota holder, quota lessee, or quota tenant during the*
 25 *lifetime of the quota holder, quota lessee, or quota ten-*

1 *ant shall not exceed the product obtained by multiply-*
 2 *ing—*

3 *(A) the base quota level for the quota holder,*
 4 *quota lessee, or quota tenant; and*

5 *(B) \$8 per pound.*

6 *(7) LIMITATIONS ON AGGREGATE ANNUAL PAY-*
 7 *MENTS.—*

8 *(A) IN GENERAL.—Except as otherwise pro-*
 9 *vided in this paragraph, the total amount pay-*
 10 *able under this subsection for any marketing*
 11 *year shall not exceed the amount made available*
 12 *under paragraph (1).*

13 *(B) ACCELERATED PAYMENTS.—Paragraph*
 14 *(1) shall not apply if accelerated payments for*
 15 *lost flue-cured tobacco quota are made in accord-*
 16 *ance with paragraph (9).*

17 *(C) REDUCTIONS.—If the sum of the*
 18 *amounts determined under paragraphs (3), (4),*
 19 *and (5) for a marketing year exceeds the amount*
 20 *made available under paragraph (1), the Sec-*
 21 *retary shall make a pro rata reduction in the*
 22 *amounts payable under paragraph (4) to quota*
 23 *lessees and quota tenants under this subsection to*
 24 *ensure that the total amount of payments for lost*

1 *flue-cured tobacco quota does not exceed the*
 2 *amount made available under paragraph (1).*

3 (D) *ROLLOVER OF PAYMENTS FOR LOST*
 4 *FLUE-CURED TOBACCO QUOTA.*—Subject to sub-
 5 *paragraph (A), if the Secretary makes a reduc-*
 6 *tion in accordance with subparagraph (C), the*
 7 *amount of the reduction shall be applied to the*
 8 *next marketing year and added to the payments*
 9 *for lost flue-cured tobacco quota for the market-*
 10 *ing year.*

11 (E) *ADDITIONAL PAYMENTS TO QUOTA*
 12 *HOLDERS EXERCISING OPTION TO RELINQUISH*
 13 *QUOTAS OR PERMITS, OR TO QUOTA LESSEES OR*
 14 *QUOTA TENANTS RELINQUISHING PERMITS.*—If
 15 *the amount made available under paragraph (1)*
 16 *exceeds the sum of the amounts determined under*
 17 *paragraphs (3), (4), and (5) for a marketing*
 18 *year, the Secretary shall distribute the amount of*
 19 *the excess pro rata to quota holders by increasing*
 20 *the amount payable to each such holder under*
 21 *paragraphs (3) and (5).*

22 (8) *DEATH OF QUOTA HOLDER, QUOTA LESSEE,*
 23 *OR QUOTA TENANT.*—If a quota holder, quota lessee or
 24 *quota tenant that is entitled to payments under para-*
 25 *graph (4) or (5) dies and is survived by a spouse or*

1 *1 or more descendants, the right to receive the pay-*
 2 *ments shall transfer to the surviving spouse or, if*
 3 *there is no surviving spouse, to the surviving descend-*
 4 *ants in equal shares.*

5 (9) *ACCELERATION OF PAYMENTS.—*

6 (A) *IN GENERAL.—On the occurrence of any*
 7 *of the events described in subparagraph (B), the*
 8 *Secretary shall make an accelerated lump sum*
 9 *payment for lost flue-cured tobacco quota as es-*
 10 *tablished under paragraphs (3), (4), and (5) to*
 11 *each quota holder, quota lessee, and quota tenant*
 12 *for flue-cured tobacco in accordance with sub-*
 13 *paragraph (C).*

14 (B) *TRIGGERING EVENTS.—The Secretary*
 15 *shall make accelerated payments under subpara-*
 16 *graph (A) if after the date of enactment of this*
 17 *Act—*

18 (i) *subject to subparagraph (D), for 3*
 19 *consecutive marketing years, the national*
 20 *marketing quota or national acreage allot-*
 21 *ment for flue-cured tobacco is less than 50*
 22 *percent of the national marketing quota or*
 23 *national acreage allotment for flue-cured to-*
 24 *bacco for the 1998 marketing year; or*

1 (ii) Congress repeals or makes ineffec-
 2 tive, directly or indirectly, any provision
 3 of—

4 (I) section 316 of the Agricultural
 5 Adjustment Act of 1938 (7 U.S.C.
 6 1314b);

7 (II) section 319 of the Agricul-
 8 tural Adjustment Act of 1938 (7 U.S.C.
 9 1314e);

10 (III) section 106 of the Agricul-
 11 tural Act of 1949 (7 U.S.C. 1445);

12 (IV) section 106A of the Agricul-
 13 tural Act of 1949 (7 U.S.C. 1445–1);

14 (V) section 106B of the Agricul-
 15 tural Act of 1949 (7 U.S.C. 1445–2);

16 or

17 (VI) section 317A of the Agricul-
 18 tural Adjustment Act of 1938.

19 (C) AMOUNT.—The amount of the acceler-
 20 ated payments made to each quota holder, quota
 21 lessee, and quota tenant under this subsection
 22 shall be equal to—

23 (i) the amount of the lifetime limita-
 24 tion established for the quota holder, quota

1 lessee, or quota tenant under paragraph (6);
 2 less

3 (ii) any payments for lost flue-cured
 4 tobacco quota received by the quota holder,
 5 quota lessee, or quota tenant before the oc-
 6 currence of any of the events described in
 7 subparagraph (B).

8 (D) *REFERENDUM VOTE NOT A TRIGGERING*
 9 *EVENT.*—A referendum vote of producers for flue-
 10 cured tobacco that results in the national mar-
 11 keting quota or national acreage allotment not
 12 being in effect for flue-cured tobacco shall not be
 13 considered a triggering event under this para-
 14 graph.

15 **SEC. 1022. INDUSTRY PAYMENTS FOR ALL DEPARTMENT**
 16 **COSTS ASSOCIATED WITH TOBACCO PRODUC-**
 17 **TION.**

18 (a) *IN GENERAL.*—The Secretary shall use such
 19 amounts as are necessary from the **National Tobacco**
 20 **Settlement** Trust Fund at the end of each fiscal year to
 21 reimburse the Secretary for—

22 (1) costs associated with the administration of
 23 programs established under this title and amendments
 24 made by this title;

1 (2) *costs associated with the administration of*
2 *the tobacco quota and price support programs admin-*
3 *istered by the Secretary;*

4 (3) *costs to the Federal Government of carrying*
5 *out crop insurance programs for tobacco;*

6 (4) *costs associated with all agricultural re-*
7 *search, extension, or education activities associated*
8 *with tobacco;*

9 (5) *costs associated with the administration of*
10 *loan association and cooperative programs for tobacco*
11 *producers, as approved by the Secretary; and*

12 (6) *any other costs incurred by the Department*
13 *of Agriculture associated with the production of to-*
14 *bacco.*

15 (b) *LIMITATIONS.—Amounts made available under*
16 *subsection (a) may not be used—*

17 (1) *to provide direct benefits to quota holders,*
18 *quota lessees, or quota tenants; or*

19 (2) *in a manner that results in a decrease, or an*
20 *increase relative to other crops, in the amount of the*
21 *crop insurance premiums assessed to participating to-*
22 *bacco producers under the Federal Crop Insurance*
23 *Act (7 U.S.C. 1501 et seq.).*

1 (c) *DETERMINATIONS.*—Not later than September 30,
 2 1998, and each fiscal year thereafter, the Secretary shall
 3 determine—

4 (1) *the amount of costs described in subsection*
 5 *(a); and*

6 (2) *the amount that will be provided under this*
 7 *section as reimbursement for the costs.*

8 **SEC. 1023. TOBACCO COMMUNITY ECONOMIC DEVELOP-**
 9 **MENT GRANTS.**

10 (a) *AUTHORITY.*—The Secretary shall make grants to
 11 tobacco-growing States in accordance with this section to
 12 enable the States to carry out economic development initia-
 13 tives in tobacco-growing communities.

14 (b) *APPLICATION.*—To be eligible to receive payments
 15 under this section, a State shall prepare and submit to the
 16 Secretary an application at such time, in such manner, and
 17 containing such information as the Secretary may require,
 18 including—

19 (1) *a description of the activities that the State*
 20 *will carry out using amounts received under the*
 21 *grant;*

22 (2) *a designation of an appropriate State agency*
 23 *to administer amounts received under the grant; and*

1 (3) *a description of the steps to be taken to en-*
2 *sure that the funds are distributed in accordance with*
3 *subsection (e).*

4 (c) *AMOUNT OF GRANT.—*

5 (1) *IN GENERAL.—From the amounts available*
6 *to carry out this section for a fiscal year, the Sec-*
7 *retary shall allot to each State an amount that bears*
8 *the same ratio to the amounts available as the total*
9 *farm income of the State derived from the production*
10 *of tobacco during the 1995 through 1997 marketing*
11 *years (as determined under paragraph (2)) bears to*
12 *the total farm income of all States derived from the*
13 *production of tobacco during the 1995 through 1997*
14 *marketing years.*

15 (2) *TOBACCO INCOME.—For the 1995 through*
16 *1997 marketing years, the Secretary shall determine*
17 *the amount of farm income derived from the produc-*
18 *tion of tobacco in each State and in all States.*

19 (d) *PAYMENTS.—*

20 (1) *IN GENERAL.—A State that has an applica-*
21 *tion approved by the Secretary under subsection (b)*
22 *shall be entitled to a payment under this section in*
23 *an amount that is equal to its allotment under sub-*
24 *section (c).*

1 (2) *FORM OF PAYMENTS.*—*The Secretary may*
 2 *make payments under this section to a State in in-*
 3 *stallments, and in advance or by way of reimburse-*
 4 *ment, with necessary adjustments on account of over-*
 5 *payments or underpayments, as the Secretary may*
 6 *determine.*

7 (3) *REALLOTMENTS.*—*Any portion of the allot-*
 8 *ment of a State under subsection (c) that the Sec-*
 9 *retary determines will not be used to carry out this*
 10 *section in accordance with an approved State appli-*
 11 *cation required under subsection (b), shall be realloc-*
 12 *ted by the Secretary to other States in proportion to*
 13 *the original allotments to the other States.*

14 (e) *USE AND DISTRIBUTION OF FUNDS.*—

15 (1) *IN GENERAL.*—*Amounts received by a State*
 16 *under this section shall be used to carry out economic*
 17 *development activities, including—*

18 (A) *rural business enterprise activities de-*
 19 *scribed in subsections (c) and (e) of section 310B*
 20 *of the Consolidated Farm and Rural Develop-*
 21 *ment Act (7 U.S.C. 1932);*

22 (B) *down payment loan assistance pro-*
 23 *grams that are similar to the program described*
 24 *in section 310E of the Consolidated Farm and*
 25 *Rural Development Act (7 U.S.C. 1935);*

1 (C) activities designed to help create pro-
2 ductive farm or off-farm employment in rural
3 areas to provide a more viable economic base
4 and enhance opportunities for improved incomes,
5 living standards, and contributions by rural in-
6 dividuals to the economic and social development
7 of tobacco communities;

8 (D) activities that expand existing infra-
9 structure, facilities, and services to capitalize on
10 opportunities to diversify economies in tobacco
11 communities and that support the development
12 of new industries or commercial ventures;

13 (E) activities by agricultural organizations
14 that provide assistance directly to participating
15 tobacco producers to assist in developing other
16 agricultural activities that supplement tobacco-
17 producing activities;

18 (F) initiatives designed to create or expand
19 locally owned value-added processing and mar-
20 keting operations in tobacco communities;

21 (G) technical assistance activities by per-
22 sons to support farmer-owned enterprises, or ag-
23 riculture-based rural development enterprises, of
24 the type described in section 252 or 253 of the
25 Trade Act of 1974 (19 U.S.C. 2342, 2343); and

1 (H) initiatives designed to partially com-
 2 pensate tobacco warehouse owners for lost reve-
 3 nues and assist the tobacco warehouse owners in
 4 establishing successful business enterprises.

5 (2) TOBACCO-GROWING COUNTIES.—Assistance
 6 may be provided by a State under this section only
 7 to assist a county in the State that has been deter-
 8 mined by the Secretary to have in excess of \$100,000
 9 in income derived from the production of tobacco dur-
 10 ing 1 or more of the 1995 through 1997 marketing
 11 years.

12 (3) DISTRIBUTION.—

13 (A) ECONOMIC DEVELOPMENT ACTIVI-
 14 TIES.—Not less than 20 percent of the amounts
 15 received by a State under this section shall be
 16 used to carry out—

17 (i) economic development activities de-
 18 scribed in subparagraph (E) or (F) of para-
 19 graph (1); or

20 (ii) agriculture-based rural develop-
 21 ment activities described in paragraph
 22 (1)(G).

23 (B) TECHNICAL ASSISTANCE ACTIVITIES.—
 24 Not less than 4 percent of the amounts received
 25 by a State under this section shall be used to

1 *carry out technical assistance activities described*
 2 *in paragraph (1)(G).*

3 (C) *TOBACCO WAREHOUSE OWNER INITIA-*
 4 *TIVES.—*

5 (i) *IN GENERAL.—Not less than 6 per-*
 6 *cent of the amounts received by a State*
 7 *under this section during each of fiscal*
 8 *years 1999 through 2008 shall be used to*
 9 *carry out initiatives described in paragraph*
 10 *(1)(H).*

11 (ii) *DIRECT PAYMENTS.—Of the*
 12 *amount made available under clause (i),*
 13 *not less than 80 percent of the amount shall*
 14 *be used to provide direct payments to to-*
 15 *bacco warehouse owners based on any de-*
 16 *cline in the annual volume of tobacco sales*
 17 *as compared to the volume of tobacco sales*
 18 *during the 1998 marketing year.*

19 (D) *TOBACCO-GROWING COUNTIES.—To be*
 20 *eligible to receive payments under this section, a*
 21 *State shall demonstrate to the Secretary that*
 22 *funding will be provided, during each 5-year pe-*
 23 *riod for which funding is provided under this*
 24 *section, for activities in each county in the State*
 25 *that has been determined under paragraph (2) to*

1 *have in excess of \$100,000 in income derived*
 2 *from the production of tobacco, in amounts that*
 3 *are at least equal to the product obtained by*
 4 *multiplying—*

5 *(i) the ratio that the tobacco produc-*
 6 *tion income in the county determined under*
 7 *paragraph (2) bears to the total tobacco*
 8 *production income for the State determined*
 9 *under subsection (c); and*

10 *(ii) 50 percent of the total amounts re-*
 11 *ceived by a State under this section during*
 12 *the 5-year period.*

13 *(f) PREFERENCES IN HIRING.—A State may require*
 14 *recipients of funds under this section to provide a preference*
 15 *in employment to—*

16 *(1) an individual who—*

17 *(A) during the 1998 calendar year, was em-*
 18 *ployed in the manufacture, processing, or*
 19 *warehousing of tobacco or tobacco products, or*
 20 *resided, in a county described in subsection*
 21 *(e)(2); and*

22 *(B) is eligible for assistance under the to-*
 23 *bacco worker transition program established*
 24 *under section 1031; or*

25 *(2) an individual who—*

1 (A) during the 1998 marketing year, car-
 2 ried out tobacco quota or relevant tobacco pro-
 3 duction activities in a county described in sub-
 4 section (e)(2);

5 (B) is eligible for a farmer opportunity
 6 grant under subpart 9 of part A of title IV of
 7 the Higher Education Act of 1965; and

8 (C) has successfully completed a course of
 9 study at an institution of higher education.

10 (g) MAINTENANCE OF EFFORT.—

11 (1) IN GENERAL.—Subject to paragraph (2), a
 12 State shall provide an assurance to the Secretary that
 13 the amount of funds expended by the State and all
 14 counties in the State described in subsection (e)(2) for
 15 any activities funded under this section for a fiscal
 16 year is not less than 90 percent of the amount of
 17 funds expended by the State and counties for the ac-
 18 tivities for the preceding fiscal year.

19 (2) REDUCTION OF GRANT AMOUNT.—If a State
 20 does not provide an assurance described in paragraph
 21 (1), the Secretary shall reduce the amount of the
 22 grant determined under subsection (c) by an amount
 23 equal to the amount by which the amount of funds ex-
 24 pended by the State and counties for the activities is
 25 less than 90 percent of the amount of funds expended

1 *by the State and counties for the activities for the*
 2 *preceding fiscal year, as determined by the Secretary.*

3 (3) *FEDERAL FUNDS.*—*For purposes of this sub-*
 4 *section, the amount of funds expended by a State or*
 5 *county shall not include any amounts made available*
 6 *by the Federal Government.*

7 **SEC. 1024. FLUE-CURED TOBACCO PRODUCTION PERMITS.**

8 *The Agricultural Adjustment Act of 1938 is amended*
 9 *by inserting after section 317 (7 U.S.C. 1314c) the follow-*
 10 *ing:*

11 **“SEC. 317A. FLUE-CURED TOBACCO PRODUCTION PERMITS.**

12 “(a) *DEFINITIONS.*—*In this section:*

13 “(1) *INDIVIDUAL ACREAGE LIMITATION.*—*The*
 14 *term ‘individual acreage limitation’ means the num-*
 15 *ber of acres of flue-cured tobacco that may be planted*
 16 *by the holder of a permit during a marketing year,*
 17 *calculated—*

18 “(A) *prior to—*

19 “(i) *any increase or decrease in the*
 20 *number due to undermarketings or over-*
 21 *marketings; and*

22 “(ii) *any reduction under subsection*
 23 *(i); and*

24 “(B) *in a manner that ensures that—*

1 “(i) the total of all individual acreage
2 limitations is equal to the national acreage
3 allotment, less the reserve provided under
4 subsection (h); and

5 “(ii) the individual acreage limitation
6 for a marketing year bears the same ratio
7 to the individual acreage limitation for the
8 previous marketing year as the ratio that
9 the national acreage allotment for the mar-
10 keting year bears to the national acreage al-
11 lotment for the previous marketing year,
12 subject to adjustments by the Secretary to
13 account for any reserve provided under sub-
14 section (h).

15 “(2) INDIVIDUAL MARKETING LIMITATION.—The
16 term ‘individual marketing limitation’ means the
17 number of pounds of flue-cured tobacco that may be
18 marketed by the holder of a permit during a market-
19 ing year, calculated—

20 “(A) prior to—

21 “(i) any increase or decrease in the
22 number due to undermarketings or over-
23 marketings; and

24 “(ii) any reduction under subsection
25 (i); and

1 “(B) in a manner that ensures that—

2 “(i) the total of all individual market-
3 ing limitations is equal to the national
4 marketing quota, less the reserve provided
5 under subsection (h); and

6 “(ii) the individual marketing limita-
7 tion for a marketing year is obtained by
8 multiplying the individual acreage limita-
9 tion by the permit yield, prior to any ad-
10 justment for undermarketings or over-
11 marketings.

12 “(3) *INDIVIDUAL TOBACCO PRODUCTION PER-*
13 *MIT.*—The term ‘individual tobacco production per-
14 mit’ means a permit issued by the Secretary to a per-
15 son authorizing the production of flue-cured tobacco
16 for any marketing year during which this section is
17 effective.

18 “(4) *NATIONAL ACREAGE ALLOTMENT.*—The term
19 ‘national acreage allotment’ means the quantity deter-
20 mined by dividing—

21 “(A) the national marketing quota; by

22 “(B) the national average yield goal.

23 “(5) *NATIONAL AVERAGE YIELD GOAL.*—The
24 term ‘national average yield goal’ means the national
25 average yield for flue-cured tobacco during the 5 mar-

1 *keting years immediately preceding the marketing*
2 *year for which the determination is being made.*

3 “(6) *NATIONAL MARKETING QUOTA.—For the*
4 *1999 and each subsequent crop of flue-cured tobacco,*
5 *the term ‘national marketing quota’ for a marketing*
6 *year means the quantity of flue-cured tobacco, as de-*
7 *termined by the Secretary, that is not more than 103*
8 *percent nor less than 97 percent of the total of—*

9 “(A) *the aggregate of the quantities of flue-*
10 *cured tobacco that domestic manufacturers of*
11 *cigarettes estimate that the manufacturers intend*
12 *to purchase on the United States auction mar-*
13 *kets or from producers during the marketing*
14 *year, as compiled and determined under section*
15 *320A;*

16 “(B) *the average annual quantity of flue-*
17 *cured tobacco exported from the United States*
18 *during the 3 marketing years immediately pre-*
19 *ceding the marketing year for which the deter-*
20 *mination is being made; and*

21 “(C) *the quantity, if any, of flue-cured to-*
22 *bacco that the Secretary, in the discretion of the*
23 *Secretary, determines is necessary to increase or*
24 *decrease the inventory of the producer-owned co-*
25 *operative marketing association that has entered*

1 *into a loan agreement with the Commodity Cred-*
 2 *it Corporation to make price support available*
 3 *to producers of flue-cured tobacco to establish or*
 4 *maintain the inventory at the reserve stock level*
 5 *for flue-cured tobacco.*

6 “(7) *PERMIT YIELD.*—*The term ‘permit yield’*
 7 *means the yield of tobacco per acre for an individual*
 8 *tobacco production permit holder that is—*

9 “(A) *based on a preliminary permit yield*
 10 *that is equal to the average yield during the 5*
 11 *marketing years immediately preceding the mar-*
 12 *keting year for which the determination is made*
 13 *in the county where the holder of the permit is*
 14 *authorized to plant flue-cured tobacco, as deter-*
 15 *mined by the Secretary, on the basis of actual*
 16 *yields of farms in the county; and*

17 “(B) *adjusted by a weighted national yield*
 18 *factor calculated by—*

19 “(i) *multiplying each preliminary per-*
 20 *mit yield by the individual acreage limita-*
 21 *tion, prior to adjustments for overmarket-*
 22 *ings, undermarketings, or reductions re-*
 23 *quired under subsection (i); and*

24 “(ii) *dividing the sum of the products*
 25 *under clause (i) for all flue-cured individual*

1 *tobacco production permit holders by the*
 2 *national acreage allotment.*

3 “(b) *INITIAL ISSUANCE OF PERMITS.—*

4 “(1) *TERMINATION OF FLUE-CURED MARKETING*
 5 *QUOTAS.—On approval through referendum under*
 6 *subsection (c), farm marketing quotas as provided*
 7 *under section 317 shall no longer be in effect for flue-*
 8 *cured tobacco.*

9 “(2) *ISSUANCE OF PERMITS TO QUOTA HOLDERS*
 10 *THAT WERE PRINCIPAL PRODUCERS.—*

11 “(A) *IN GENERAL.—On approval through a*
 12 *referendum under subsection (c), each individual*
 13 *quota holder under section 317 that was a prin-*
 14 *cipal producer of flue-cured tobacco during the*
 15 *1998 marketing year, as determined by the Sec-*
 16 *retary, shall be issued an individual tobacco pro-*
 17 *duction permit under this section.*

18 “(B) *NOTIFICATION.—The Secretary shall*
 19 *notify the holder of each permit of the individual*
 20 *acreage limitation and the individual marketing*
 21 *limitation applicable to the holder for each mar-*
 22 *keting year.*

23 “(C) *INDIVIDUAL ACREAGE LIMITATION FOR*
 24 *1999 MARKETING YEAR.—In establishing the indi-*
 25 *vidual acreage limitation for the 1999 marketing*

year under this section, the farm acreage allotment that was allotted to a farm owned by the quota holder during the 1997 marketing year shall be considered the individual acreage limitation for the previous marketing year.

“(D) *INDIVIDUAL MARKETING LIMITATION FOR 1999 MARKETING YEAR.*—In establishing the individual marketing limitation for the 1999 marketing year under this section, the farm marketing quota that was allotted to a farm owned by the quota holder during the 1997 marketing year shall be considered the individual marketing limitation for the previous marketing year.

“(3) *QUOTA HOLDERS THAT WERE NOT PRINCIPAL PRODUCERS.*—

“(A) *IN GENERAL.*—Except as provided in subparagraph (B), on approval through a referendum under subsection (c)—

“(i) each person that was a quota holder under section 317 but that was not a principal producer of flue-cured tobacco during the 1997 marketing year, as determined by the Secretary, shall not be eligible to own a permit; and

1 “(ii) the Secretary shall not issue any
 2 permit during the 25-year period beginning
 3 on the date of enactment of this Act to any
 4 person that was a quota holder and was not
 5 the principal producer of flue-cured tobacco
 6 during the 1997 marketing year.

7 “(B) *MEDICAL HARDSHIPS AND CROP DIS-*
 8 *ASTERS.*—Subparagraph (A) shall not apply to
 9 a person that would have been the principal pro-
 10 ducer of flue-cured tobacco during the 1997 mar-
 11 keting year but for a medical hardship or crop
 12 disaster that occurred during the 1997 marketing
 13 year.

14 “(C) *ADMINISTRATION.*—The Secretary
 15 shall issue regulations—

16 “(i) defining the term ‘person’ for the
 17 purpose of this paragraph; and

18 “(ii) prescribing such rules as the Sec-
 19 retary determines are necessary to ensure a
 20 fair and reasonable application of the pro-
 21 hibition established under this paragraph.

22 “(4) *ISSUANCE OF PERMITS TO PRINCIPAL PRO-*
 23 *DUCERS OF FLUE-CURED TOBACCO.*—

24 “(A) *IN GENERAL.*—On approval through a
 25 referendum under subsection (c), each individual

1 *quota lessee or quota tenant (as defined in sec-*
 2 *tion 1002 of the LEAF Act) that was the prin-*
 3 *cipal producer of flue-cured tobacco during the*
 4 *1997 marketing year, as determined by the Sec-*
 5 *retary, shall be issued an individual tobacco pro-*
 6 *duction permit under this section.*

7 *“(B) INDIVIDUAL ACREAGE LIMITATIONS.—*
 8 *In establishing the individual acreage limitation*
 9 *for the 1999 marketing year under this section,*
 10 *the farm acreage allotment that was allotted to*
 11 *a farm owned by a quota holder for whom the*
 12 *quota lessee or quota tenant was the principal*
 13 *producer of flue-cured tobacco during the 1997*
 14 *marketing year shall be considered the individ-*
 15 *ual acreage limitation for the previous market-*
 16 *ing year.*

17 *“(C) INDIVIDUAL MARKETING LIMITA-*
 18 *TIONS.—In establishing the individual market-*
 19 *ing limitation for the 1999 marketing year*
 20 *under this section, the individual marketing lim-*
 21 *itation for the previous year for an individual*
 22 *described in this paragraph shall be calculated*
 23 *by multiplying—*

24 *“(i) the farm marketing quota that*
 25 *was allotted to a farm owned by a quota*

holder for whom the quota lessee or quota holder was the principal producer of flue-cured tobacco during the 1997 marketing year, by

“(ii) the ratio that—

“(I) the sum of all flue-cured tobacco farm marketing quotas for the 1997 marketing year prior to adjusting for undermarketing and overmarketing; bears to

“(II) the sum of all flue-cured tobacco farm marketing quotas for the 1998 marketing year, after adjusting for undermarketing and overmarketing.

“(D) SPECIAL RULE FOR TENANT OF LEASED FLUE-CURED TOBACCO.—If the farm marketing quota or farm acreage allotment of a quota holder was produced pursuant to an agreement under which a quota lessee rented land from a quota holder and a quota tenant was the primary producer, as determined by the Secretary, of flue-cured tobacco pursuant to the farm marketing quota or farm acreage allotment, the farm marketing quota or farm acreage allotment shall be divided proportionately between

1 *the quota lessee and quota tenant for purposes of*
 2 *issuing individual tobacco production permits*
 3 *under this paragraph.*

4 *“(5) OPTION OF QUOTA LESSEE OR QUOTA TEN-*
 5 *ANT TO RELINQUISH PERMIT.—*

6 *“(A) IN GENERAL.—Each quota lessee or*
 7 *quota tenant that is issued an individual tobacco*
 8 *production permit under paragraph (4) shall be*
 9 *given the option of relinquishing the permit in*
 10 *exchange for payments made under section*
 11 *1021(e)(5) of the LEAF Act.*

12 *“(B) NOTIFICATION.—A quota lessee or*
 13 *quota tenant that is issued an individual tobacco*
 14 *production permit shall give notification of the*
 15 *intention to exercise the option at such time and*
 16 *in such manner as the Secretary may require,*
 17 *but not later than 30 days after the permit is*
 18 *issued.*

19 *“(C) REALLOCATION OF PERMIT.—The Sec-*
 20 *retary shall add the authority to produce flue-*
 21 *cured tobacco under the individual tobacco pro-*
 22 *duction permit relinquished under this para-*
 23 *graph to the county production pool established*
 24 *under paragraph (8) for reallocation by the ap-*
 25 *propriate county committee.*

1 “(6) *ACTIVE PRODUCER REQUIREMENT.*—

2 “(A) *REQUIREMENT FOR SHARING RISK.*—

3 *No individual tobacco production permit shall be*
 4 *issued to, or maintained by, a person that does*
 5 *not fully share in the risk of producing a crop*
 6 *of flue-cured tobacco.*

7 “(B) *CRITERIA FOR SHARING RISK.*—*For*

8 *purposes of this paragraph, a person shall be*
 9 *considered to have fully shared in the risk of pro-*
 10 *duction of a crop if—*

11 “(i) *the investment of the person in the*
 12 *production of the crop is not less than 100*
 13 *percent of the costs of production associated*
 14 *with the crop;*

15 “(ii) *the amount of the person’s return*
 16 *on the investment is dependent solely on the*
 17 *sale price of the crop; and*

18 “(iii) *the person may not receive any*
 19 *of the return before the sale of the crop.*

20 “(C) *PERSONS NOT SHARING RISK.*—

21 “(i) *FORFEITURE.*—*Any person that*
 22 *fails to fully share in the risks of production*
 23 *under this paragraph shall forfeit an indi-*
 24 *vidual tobacco production permit if, after*
 25 *notice and opportunity for a hearing, the*

1 *appropriate county committee determines*
2 *that the conditions for forfeiture exist.*

3 “(ii) *REALLOCATION.*—*The Secretary*
4 *shall add the authority to produce flue-*
5 *cured tobacco under the individual tobacco*
6 *production permit forfeited under this sub-*
7 *paragraph to the county production pool es-*
8 *tablished under paragraph (8) for realloca-*
9 *tion by the appropriate county committee.*

10 “(D) *NOTICE.*—*Notice of any determination*
11 *made by a county committee under subpara-*
12 *graph (C) shall be mailed, as soon as practicable,*
13 *to the person involved.*

14 “(E) *REVIEW.*—*If the person is dissatisfied*
15 *with the determination, the person may request,*
16 *not later than 15 days after notice of the deter-*
17 *mination is received, a review of the determina-*
18 *tion by a local review committee under the pro-*
19 *cedures established under section 363 for farm*
20 *marketing quotas.*

21 “(7) *COUNTY OF ORIGIN REQUIREMENT.*—*For*
22 *the 1999 and each subsequent crop of flue-cured to-*
23 *bacco, all tobacco produced pursuant to an individual*
24 *tobacco production permit shall be produced in the*
25 *same county in which was produced the tobacco pro-*

1 *duced during the 1997 marketing year pursuant to*
 2 *the farm marketing quota or farm acreage allotment*
 3 *on which the individual tobacco production permit is*
 4 *based.*

5 *“(8) COUNTY PRODUCTION POOL.—*

6 *“(A) IN GENERAL.—The authority to*
 7 *produce flue-cured tobacco under an individual*
 8 *tobacco production permit that is forfeited, relin-*
 9 *quished, or surrendered within a county may be*
 10 *reallocated by the appropriate county committee*
 11 *to tobacco producers located in the same county*
 12 *that apply to the committee to produce flue-cured*
 13 *tobacco under the authority.*

14 *“(B) PRIORITY.—In reallocating individual*
 15 *tobacco production permits under this para-*
 16 *graph, a county committee shall provide a prior-*
 17 *ity to—*

18 *“(i) an active tobacco producer that*
 19 *controls the authority to produce a quantity*
 20 *of flue-cured tobacco under an individual*
 21 *tobacco production permit that is equal to*
 22 *or less than the average number of pounds*
 23 *of flue-cured tobacco that was produced by*
 24 *the producer during each of the 1995*

1 *through 1997 marketing years, as deter-*
2 *mined by the Secretary; and*

3 *“(ii) a new tobacco producer.*

4 *“(C) CRITERIA.—Individual tobacco pro-*
5 *duction permits shall be reallocated by the ap-*
6 *propriate county committee under this para-*
7 *graph in a fair and equitable manner after tak-*
8 *ing into consideration—*

9 *“(i) the experience of the producer;*

10 *“(ii) the availability of land, labor,*
11 *and equipment for the production of to-*
12 *bacco;*

13 *“(iii) crop rotation practices; and*

14 *“(iv) the soil and other physical factors*
15 *affecting the production of tobacco.*

16 *“(D) MEDICAL HARDSHIPS AND CROP DIS-*
17 *ASTERS.—Notwithstanding any other provision*
18 *of this Act, the Secretary may issue an individ-*
19 *ual tobacco production permit under this para-*
20 *graph to a producer that is otherwise ineligible*
21 *for the permit due to a medical hardship or crop*
22 *disaster that occurred during the 1997 marketing*
23 *year.*

24 *“(c) REFERENDUM.—*

1 “(1) *ANNOUNCEMENT OF QUOTA AND ALLOT-*
 2 *MENT.*—Not later than December 15, 1998, the Sec-
 3 *retary pursuant to subsection (b) shall determine and*
 4 *announce—*

5 “(A) *the quantity of the national marketing*
 6 *quota for flue-cured tobacco for the 1999 market-*
 7 *ing year; and*

8 “(B) *the national acreage allotment and na-*
 9 *tional average yield goal for the 1999 crop of*
 10 *flue-cured tobacco.*

11 “(2) *SPECIAL REFERENDUM.*—Not later than 30
 12 *days after the announcement of the quantity of the*
 13 *national marketing quota, the Secretary shall conduct*
 14 *a special referendum of the producers that were the*
 15 *principal producers of flue-cured tobacco of the 1997*
 16 *crop to determine whether the producers approve or*
 17 *oppose the establishment of individual tobacco pro-*
 18 *duction permits on an acreage-poundage basis as pro-*
 19 *vided in this section for the 1999 through 2001 mar-*
 20 *keting years.*

21 “(3) *APPROVAL OF PERMITS.*—If the Secretary
 22 *determines that more than 66²/₃ percent of the pro-*
 23 *ducers voting in the special referendum approve the*
 24 *establishment of individual tobacco production per-*
 25 *mits on an acreage-poundage basis—*

1 “(A) *individual tobacco production permits*
 2 *on an acreage-poundage basis as provided in this*
 3 *section shall be in effect for the 1999 through*
 4 *2001 marketing years; and*

5 “(B) *marketing quotas on an acreage-*
 6 *poundage basis shall cease to be in effect for the*
 7 *1999 through 2001 marketing years.*

8 “(4) *DISAPPROVAL OF PERMITS.—If individual*
 9 *tobacco production permits on an acreage-poundage*
 10 *basis are not approved by more than 66²/₃ percent of*
 11 *the producers voting in the referendum, no marketing*
 12 *quotas on an acreage-poundage basis shall continue*
 13 *in effect that were proclaimed under section 317 prior*
 14 *to the referendum.*

15 “(5) *APPLICABLE MARKETING YEARS.—If indi-*
 16 *vidual tobacco production permits have been made ef-*
 17 *fective for flue-cured tobacco on an acreage-poundage*
 18 *basis pursuant to this subsection, the Secretary shall,*
 19 *not later than December 15 of any future marketing*
 20 *year, announce a national marketing quota for that*
 21 *type of tobacco for the next 3 succeeding marketing*
 22 *years if the marketing year is the last year of 3 con-*
 23 *secutive years for which individual tobacco produc-*
 24 *tion permits previously proclaimed will be in effect.*

1 “(d) *ANNUAL ANNOUNCEMENT OF NATIONAL MARKET-*
 2 *ING QUOTA.*—*The Secretary shall determine and announce*
 3 *the national marketing quota, national acreage allotment,*
 4 *and national average yield goal for the second and third*
 5 *marketing years of any 3-year period for which individual*
 6 *tobacco production permits are in effect on or before the*
 7 *December 15 immediately preceding the beginning of the*
 8 *marketing year to which the quota, allotment, and goal*
 9 *apply.*

10 “(e) *ANNUAL ANNOUNCEMENT OF INDIVIDUAL TO-*
 11 *BACCO PRODUCTION PERMITS.*—*If a national marketing*
 12 *quota, national acreage allotment, and national average*
 13 *yield goal are determined and announced, the Secretary*
 14 *shall provide for the determination of individual tobacco*
 15 *production permits, individual acreage limitations, and in-*
 16 *dividual marketing limitations under this section for the*
 17 *crop and marketing year covered by the determinations.*

18 “(f) *ASSIGNMENT OF TOBACCO PRODUCTION PER-*
 19 *MITTS.*—

20 “(1) *LIMITATION TO SAME COUNTY.*—*Each indi-*
 21 *vidual tobacco production permit holder shall assign*
 22 *the individual acreage limitation and individual*
 23 *marketing limitation to 1 or more farms located with-*
 24 *in the county of origin of the individual tobacco pro-*
 25 *duction permit.*

1 “(2) *FILING WITH COUNTY COMMITTEE.*—*The as-*
 2 *signment of an individual acreage limitation and in-*
 3 *dividual marketing limitation shall not be effective*
 4 *until evidence of the assignment, in such form as re-*
 5 *quired by the Secretary, is filed with and determined*
 6 *by the county committee for the county in which the*
 7 *farm involved is located.*

8 “(3) *LIMITATION ON TILLABLE CROPLAND.*—*The*
 9 *total acreage assigned to any farm under this sub-*
 10 *section shall not exceed the acreage of cropland on the*
 11 *farm.*

12 “(g) *PROHIBITION ON SALE OR LEASING OF INDIVID-*
 13 *UAL TOBACCO PRODUCTION PERMITS.*—

14 “(1) *IN GENERAL.*—*Except as provided in para-*
 15 *graphs (2) and (3), the Secretary shall not permit the*
 16 *sale and transfer, or lease and transfer, of an individ-*
 17 *ual tobacco production permit issued under this sec-*
 18 *tion.*

19 “(2) *TRANSFER TO DESCENDANTS.*—

20 “(A) *DEATH.*—*In the case of the death of a*
 21 *person to whom an individual tobacco produc-*
 22 *tion permit has been issued under this section,*
 23 *the permit shall transfer to the surviving spouse*
 24 *of the person or, if there is no surviving spouse,*
 25 *to surviving direct descendants of the person.*

1 “(B) *TEMPORARY INABILITY TO FARM.*—In
 2 *the case of the death of a person to whom an in-*
 3 *dividual tobacco production permit has been*
 4 *issued under this section and whose descendants*
 5 *are temporarily unable to produce a crop of to-*
 6 *bacco, the Secretary may hold the license in the*
 7 *name of the descendants for a period of not more*
 8 *than 18 months.*

9 “(3) *VOLUNTARY TRANSFERS.*—A person that is
 10 *eligible to obtain an individual tobacco production*
 11 *permit under this section may at any time transfer*
 12 *all or part of the permit to the person’s spouse or di-*
 13 *rect descendants that are actively engaged in the pro-*
 14 *duction of tobacco.*

15 “(h) *RESERVE.*—

16 “(1) *IN GENERAL.*—For each marketing year for
 17 *which individual tobacco production permits are in*
 18 *effect under this section, the Secretary may establish*
 19 *a reserve from the national marketing quota in a*
 20 *quantity equal to not more than 1 percent of the na-*
 21 *tional marketing quota to be available for—*

22 “(A) *making corrections of errors in indi-*
 23 *vidual acreage limitations and individual mar-*
 24 *keting limitations;*

25 “(B) *adjusting inequities; and*

1 “(C) *establishing individual tobacco produc-*
 2 *tion permits for new tobacco producers (except*
 3 *that not less than two-thirds of the reserve shall*
 4 *be for establishing such permits for new tobacco*
 5 *producers).*

6 “(2) *ELIGIBLE PERSONS.—To be eligible for a*
 7 *new individual tobacco production permit, a producer*
 8 *must have owned a farm on which tobacco was not*
 9 *produced or considered produced during the imme-*
 10 *diately preceding 5 years.*

11 “(3) *APPORTIONMENT FOR NEW PRODUCERS.—*
 12 *The part of the reserve held for apportionment to new*
 13 *individual tobacco producers shall be allotted on the*
 14 *basis of—*

15 “(A) *land, labor, and equipment available*
 16 *for the production of tobacco;*

17 “(B) *crop rotation practices;*

18 “(C) *soil and other physical factors affect-*
 19 *ing the production of tobacco; and*

20 “(D) *the past tobacco-producing experience*
 21 *of the producer.*

22 “(4) *PERMIT YIELD.—The permit yield for any*
 23 *producer for which a new individual tobacco produc-*
 24 *tion permit is established shall be determined on the*
 25 *basis of available productivity data for the land in-*

1 *involved and yields for similar farms in the same coun-*
 2 *ty.*

3 “(i) *PENALTIES.*—

4 “(1) *PRODUCTION ON OTHER FARMS.*—If any
 5 *quantity of tobacco is marketed as having been pro-*
 6 *duced under an individual acreage limitation or in-*
 7 *dividual marketing limitation assigned to a farm but*
 8 *was produced on a different farm, the individual*
 9 *acreage limitation or individual marketing limitation*
 10 *for the following marketing year shall be forfeited.*

11 “(2) *FALSE REPORT.*—If a person to which an
 12 *individual tobacco production permit is issued files,*
 13 *or aids or acquiesces in the filing of, a false report*
 14 *with respect to the assignment of an individual acre-*
 15 *age limitation or individual marketing limitation for*
 16 *a quantity of tobacco, the individual acreage limita-*
 17 *tion or individual marketing limitation for the fol-*
 18 *lowing marketing year shall be forfeited.*

19 “(j) *MARKETING PENALTIES.*—

20 “(1) *IN GENERAL.*—When individual tobacco
 21 *production permits under this section are in effect,*
 22 *provisions with respect to penalties for the marketing*
 23 *of excess tobacco and the other provisions contained in*
 24 *section 314 shall apply in the same manner and to*

1 *the same extent as they would apply under section*
 2 *317(g) if farm marketing quotas were in effect.*

3 *“(2) PRODUCTION ON OTHER FARMS.—If a pro-*
 4 *ducer falsely identifies tobacco as having been pro-*
 5 *duced on or marketed from a farm to which an indi-*
 6 *vidual acreage limitation or individual marketing*
 7 *limitation has been assigned, future individual acre-*
 8 *age limitations and individual marketing limitations*
 9 *shall be forfeited.”.*

10 **SEC. 1025. MODIFICATIONS IN FEDERAL TOBACCO PRO-**
 11 **GRAMS.**

12 *(a) PROGRAM REFERENDA.—Section 312(c) of the Ag-*
 13 *ricultural Adjustment Act of 1938 (7 U.S.C. 1312(c)) is*
 14 *amended—*

15 *(1) by striking “(c) Within thirty” and inserting*
 16 *the following:*

17 *“(c) REFERENDA ON QUOTAS.—*

18 *“(1) IN GENERAL.—Not later than 30”; and*

19 *(2) by adding at the end the following:*

20 *“(2) REFERENDA ON PROGRAM CHANGES.—*

21 *“(A) IN GENERAL.—In the case of any type*
 22 *of tobacco for which marketing quotas are in ef-*
 23 *fect, on the receipt of a petition from more than*
 24 *5 percent of the producers of that type of tobacco*
 25 *in a State, the Secretary shall conduct a state-*

1 *wide referendum on any proposal related to the*
 2 *lease and transfer of tobacco quota within a*
 3 *State requested by the petition that is authorized*
 4 *under this part.*

5 “(B) *APPROVAL OF PROPOSALS.*—*If a ma-*
 6 *jority of producers of the type of tobacco in the*
 7 *State approve a proposal in a referendum con-*
 8 *ducted under subparagraph (A), the Secretary*
 9 *shall implement the proposal in a manner that*
 10 *applies to all producers and quota holders of that*
 11 *type of tobacco in the State.”.*

12 (b) *PURCHASE REQUIREMENTS.*—*Section 320B of the*
 13 *Agricultural Adjustment Act of 1938 (7 U.S.C. 1314h) is*
 14 *amended—*

15 *(1) in subsection (c)—*

16 *(A) by striking “(c) The amount” and in-*
 17 *serting “(c) AMOUNT OF PENALTY.—For the*
 18 *1998 and subsequent marketing years, the*
 19 *amount”; and*

20 *(B) by striking paragraph (1) and inserting*
 21 *the following:*

22 “(1) *105 percent of the average market price for*
 23 *the type of tobacco involved during the preceding*
 24 *marketing year; and”; and*

1 (2) *by striking subsection (d) and inserting the*
 2 *following:*

3 “(d) *USE OF PENALTY PAYMENTS.—An amount equiv-*
 4 *alent to each penalty collected by the Secretary under this*
 5 *section shall be transmitted by the Secretary to the Sec-*
 6 *retary of the Treasury for deposit in the [Tobacco Commu-*
 7 *nity Revitalization Trust Fund established under section*
 8 *1011 of the LEAF Act]* **National Tobacco Settle-**
 9 **ment Trust Fund.**”.

10 (c) *ELIMINATION OF TOBACCO MARKETING ASSESS-*
 11 *MENT.—*

12 (1) *IN GENERAL.—Section 106 of the Agricul-*
 13 *tural Act of 1949 (7 U.S.C. 1445) is amended by*
 14 *striking subsection (g).*

15 (2) *CONFORMING AMENDMENT.—Section 422(c)*
 16 *of the Uruguay Round Agreements Act (Public Law*
 17 *103–465; 7 U.S.C. 1445 note) is amended by striking*
 18 *“section 106(g), 106A, or 106B of the Agricultural*
 19 *Act of 1949 (7 U.S.C. 1445(g), 1445–1, or 1445–2)”*
 20 *and inserting “section 106A or 106B of the Agricul-*
 21 *tural Act of 1949 (7 U.S.C. 1445–1, 1445–2)”.*

22 (d) *ADJUSTMENT FOR LAND RENTAL COSTS.—Section*
 23 *106 of the Agricultural Act of 1949 (7 U.S.C. 1445) is*
 24 *amended by adding at the end the following:*

1 “(h) *ADJUSTMENT FOR LAND RENTAL COSTS.*—For
 2 *each of the 1999 and 2000 marketing years for flue-cured*
 3 *tobacco, after consultation with producers, State farm orga-*
 4 *nizations and cooperative associations, the Secretary shall*
 5 *make an adjustment in the price support level for flue-cured*
 6 *tobacco equal to the annual change in the average cost per*
 7 *pound to flue-cured producers, as determined by the Sec-*
 8 *retary, under agreements through which producers rent*
 9 *land to produce flue-cured tobacco.”.*

10 (e) *FIRE-CURED AND DARK AIR-CURED TOBACCO*
 11 *PROGRAMS.*—

12 (1) *LIMITATION ON TRANSFERS.*—Section 318(g)
 13 *of the Agricultural Adjustment Act of 1938 (7 U.S.C.*
 14 *1314d(g)) is amended—*

15 (A) *by striking “ten” and inserting “30”;*

16 *and*

17 (B) *by inserting “during any crop year”*
 18 *after “transferred to any farm”.*

19 (2) *LOSS OF ALLOTMENT OR QUOTA THROUGH*
 20 *UNDERPLANTING.*—Section 318 *of the Agricultural*
 21 *Adjustment Act of 1938 (7 U.S.C. 1314d) is amended*
 22 *by adding at the end the following:*

23 “(k) *LOSS OF ALLOTMENT OR QUOTA THROUGH*
 24 *UNDERPLANTING.*—Effective for the 1999 and subsequent
 25 *marketing years, no acreage allotment or acreage-poundage*

1 *quota, other than a new marketing quota, shall be estab-*
 2 *lished for a farm on which no fire-cured or dark air-cured*
 3 *tobacco was planted or considered planted during at least*
 4 *2 of the 3 crop years immediately preceding the crop year*
 5 *for which the acreage allotment or acreage-poundage quota*
 6 *would otherwise be established.”.*

7 (f) *EXPANSION OF TYPES OF TOBACCO SUBJECT TO*
 8 *NO NET COST ASSESSMENT.*—

9 (1) *NO NET COST TOBACCO FUND.*—Section
 10 106A(d)(1)(A) of the Agricultural Act of 1949 (7
 11 U.S.C. 1445–1(d)(1)(A)) is amended—

12 (A) in clause (ii), by inserting after “Bur-
 13 ley quota tobacco” the following: “and fire-cured
 14 and dark air-cured quota tobacco”; and

15 (B) in clause (iii)—

16 (i) in the matter preceding subclause
 17 (I), by striking “Flue-cured or Burley to-
 18 bacco” and inserting “each kind of tobacco
 19 for which price support is made available
 20 under this Act, and each kind of like to-
 21 bacco,”; and

22 (ii) by striking subclause (II) and in-
 23 serting the following:

24 “(II) the sum of the amount of the
 25 per pound producer contribution and

1 *purchaser assessment (if any) for the*
 2 *kind of tobacco payable under clauses*
 3 *(i) and (ii); and”.*

4 (2) *NO NET COST TOBACCO ACCOUNT.*—Section
 5 *106B(d)(1) of the Agricultural Act of 1949 (7 U.S.C.*
 6 *1445–2(d)(1)) is amended—*

7 (A) *in subparagraph (B), by inserting after*
 8 *“Burley quota tobacco” the following: “and fire-*
 9 *cured and dark air-cured tobacco”;* and

10 (B) *in subparagraph (C), by striking “Flue-*
 11 *cured and Burley tobacco” and inserting “each*
 12 *kind of tobacco for which price support is made*
 13 *available under this Act, and each kind of like*
 14 *tobacco,”.*

15 ***Subtitle C—Farmer and Worker***
 16 ***Transition Assistance***

17 ***SEC. 1031. TOBACCO WORKER TRANSITION PROGRAM.***

18 (a) *GROUP ELIGIBILITY REQUIREMENTS.*—

19 (1) *CRITERIA.*—A group of workers (including
 20 *workers in any firm or subdivision of a firm involved*
 21 *in the manufacture, processing, or warehousing of to-*
 22 *bacco or tobacco products) shall be certified as eligible*
 23 *to apply for adjustment assistance under this section*
 24 *pursuant to a petition filed under subsection (b) if the*
 25 *Secretary of Labor determines that a significant*

1 *number or proportion of the workers in the workers’*
 2 *firm or an appropriate subdivision of the firm have*
 3 *become totally or partially separated, or are threat-*
 4 *ened to become totally or partially separated, and—*

5 *(A) the sales or production, or both, of the*
 6 *firm or subdivision have decreased absolutely;*
 7 *and*

8 *(B) the implementation of the national to-*
 9 *bacco settlement contributed importantly to the*
 10 *workers’ separation or threat of separation and*
 11 *to the decline in the sales or production of the*
 12 *firm or subdivision.*

13 *(2) DEFINITION OF CONTRIBUTED IMPOR-*
 14 *TANTLY.—In paragraph (1)(B), the term “contributed*
 15 *importantly” means a cause that is important but*
 16 *not necessarily more important than any other cause.*

17 *(3) REGULATIONS.—The Secretary shall issue*
 18 *regulations relating to the application of the criteria*
 19 *described in paragraph (1) in making preliminary*
 20 *findings under subsection (b) and determinations*
 21 *under subsection (c).*

22 *(b) PRELIMINARY FINDINGS AND BASIC ASSIST-*
 23 *ANCE.—*

24 *(1) FILING OF PETITIONS.—A petition for cer-*
 25 *tification of eligibility to apply for adjustment assist-*

1 *ance under this section may be filed by a group of*
 2 *workers (including workers in any firm or subdivi-*
 3 *sion of a firm involved in the manufacture, process-*
 4 *ing, or warehousing of tobacco or tobacco products) or*
 5 *by their certified or recognized union or other duly*
 6 *authorized representative with the Governor of the*
 7 *State in which the workers' firm or subdivision there-*
 8 *of is located.*

9 (2) *FINDINGS AND ASSISTANCE.*—*On receipt of a*
 10 *petition under paragraph (1), the Governor shall—*

11 (A) *notify the Secretary that the Governor*
 12 *has received the petition;*

13 (B) *within 10 days after receiving the peti-*
 14 *tion—*

15 (i) *make a preliminary finding as to*
 16 *whether the petition meets the criteria de-*
 17 *scribed in subsection (a)(1); and*

18 (ii) *transmit the petition, together with*
 19 *a statement of the finding under clause (i)*
 20 *and reasons for the finding, to the Secretary*
 21 *for action under subsection (c); and*

22 (C) *if the preliminary finding under sub-*
 23 *paragraph (B)(i) is affirmative, ensure that*
 24 *rapid response and basic readjustment services*

1 *authorized under other Federal laws are made*
 2 *available to the workers.*

3 (c) *REVIEW OF PETITIONS BY SECRETARY; CERTIFI-*
 4 *CATIONS.—*

5 (1) *IN GENERAL.—The Secretary, within 30*
 6 *days after receiving a petition under subsection*
 7 *(b)(2)(B)(ii), shall determine whether the petition*
 8 *meets the criteria described in subsection (a)(1). On*
 9 *a determination that the petition meets the criteria,*
 10 *the Secretary shall issue to workers covered by the pe-*
 11 *tition a certification of eligibility to apply for the as-*
 12 *sistance described in subsection (d).*

13 (2) *DENIAL OF CERTIFICATION.—On the denial*
 14 *of a certification with respect to a petition under*
 15 *paragraph (1), the Secretary shall review the petition*
 16 *in accordance with the requirements of other applica-*
 17 *ble assistance programs to determine if the workers*
 18 *may be certified under the other programs.*

19 (d) *COMPREHENSIVE ASSISTANCE.—*

20 (1) *IN GENERAL.—Workers covered by a certifi-*
 21 *cation issued by the Secretary under subsection (c)(1)*
 22 *shall be provided with benefits and services described*
 23 *in paragraph (2) in the same manner and to the*
 24 *same extent as workers covered under a certification*
 25 *under subchapter A of title II of the Trade Act of*

1 1974 (19 U.S.C. 2271 *et seq.*), except that the total
 2 amount of payments under this section for any fiscal
 3 year shall not exceed \$25,000,000.

4 (2) *BENEFITS AND SERVICES.*—*The benefits and*
 5 *services described in this paragraph are the following:*

6 (A) *Employment services of the type de-*
 7 *scribed in section 235 of the Trade Act of 1974*
 8 *(19 U.S.C. 2295).*

9 (B) *Training described in section 236 of the*
 10 *Trade Act of 1974 (19 U.S.C. 2296), except that*
 11 *notwithstanding the provisions of section*
 12 *236(a)(2)(A) of that Act, the total amount of*
 13 *payments for training under this section for any*
 14 *fiscal year shall not exceed \$12,500,000.*

15 (C) *Tobacco worker readjustment allow-*
 16 *ances, which shall be provided in the same man-*
 17 *ner as trade readjustment allowances are pro-*
 18 *vided under part I of subchapter B of chapter 2*
 19 *of title II of the Trade Act of 1974 (19 U.S.C.*
 20 *2291 et seq.), except that—*

21 (i) *the provisions of sections*
 22 *231(a)(5)(C) and 231(c) of that Act (19*
 23 *U.S.C. 2291(a)(5)(C), 2291(c)), authorizing*
 24 *the payment of trade readjustment allow-*
 25 *ances on a finding that it is not feasible or*

1 *appropriate to approve a training program*
2 *for a worker, shall not be applicable to pay-*
3 *ment of allowances under this section; and*

4 *(ii) notwithstanding the provisions of*
5 *section 233(b) of that Act (19 U.S.C.*
6 *2293(b)), in order for a worker to qualify*
7 *for tobacco readjustment allowances under*
8 *this section, the worker shall be enrolled in*
9 *a training program approved by the Sec-*
10 *retary of the type described in section*
11 *236(a) of that Act (19 U.S.C. 2296(a)) by*
12 *the later of—*

13 *(I) the last day of the 16th week*
14 *of the worker's initial unemployment*
15 *compensation benefit period; or*

16 *(II) the last day of the 6th week*
17 *after the week in which the Secretary*
18 *issues a certification covering the*
19 *worker.*

20 *In cases of extenuating circumstances relat-*
21 *ing to enrollment of a worker in a training*
22 *program under this section, the Secretary*
23 *may extend the time for enrollment for a*
24 *period of not to exceed 30 days.*

1 (D) *Job search allowances of the type de-*
 2 *scribed in section 237 of the Trade Act of 1974*
 3 *(19 U.S.C. 2297).*

4 (E) *Relocation allowances of the type de-*
 5 *scribed in section 238 of the Trade Act of 1974*
 6 *(19 U.S.C. 2298).*

7 (e) *INELIGIBILITY OF INDIVIDUALS RECEIVING PAY-*
 8 *MENTS FOR LOST TOBACCO QUOTA.*—*No benefits or services*
 9 *may be provided under this section to any individual who*
 10 *has received payments for lost tobacco quota under section*
 11 *1021.*

12 (f) *FUNDING.*—*Of the amounts [in the] made*
 13 *available out of the National Tobacco Settle-*
 14 *ment Trust Fund, the Secretary may use not to exceed*
 15 *\$25,000,000 for each of fiscal years 1999 through 2008 to*
 16 *provide assistance under this section.*

17 (g) *EFFECTIVE DATE.*—*This section shall take effect*
 18 *on the date that is the later of—*

19 (1) *October 1, 1998; or*

20 (2) *the date of enactment of this Act.*

21 (h) *TERMINATION DATE.*—*No assistance, vouchers, al-*
 22 *lowances, or other payments may be provided under this*
 23 *section after the date that is the earlier of—*

24 (1) *the date that is 10 years after the effective*
 25 *date of this section under subsection (g); or*

1 (2) *the date on which legislation establishing a*
 2 *program providing dislocated workers with com-*
 3 *prehensive assistance substantially similar to the as-*
 4 *istance provided by this section becomes effective.*

5 **SEC. 1032. FARMER OPPORTUNITY GRANTS.**

6 *Part A of title IV of the Higher Education Act of 1965*
 7 *(20 U.S.C. 1070 et seq.) is amended by adding at the end*
 8 *the following:*

9 **“Subpart 9—Farmer Opportunity Grants**

10 **“SEC. 420D. STATEMENT OF PURPOSE.**

11 *“It is the purpose of this subpart to assist in making*
 12 *available the benefits of postsecondary education to eligible*
 13 *students (determined in accordance with section 420F) in*
 14 *institutions of higher education by providing farmer oppor-*
 15 *tunity grants to all eligible students.*

16 **“SEC. 420E. PROGRAM AUTHORITY; AMOUNT AND DETER-**
 17 **MINATIONS; APPLICATIONS.**

18 *“(a) PROGRAM AUTHORITY AND METHOD OF DIS-*
 19 *TRIBUTION.—*

20 *“(1) PROGRAM AUTHORITY.—From amounts*
 21 *made available [under section 1011(d)(5) of the*
 22 *LEAF Act] out of the National Tobacco Set-*
 23 *tlement Trust Fund, the Secretary, during the*
 24 *period beginning July 1, 1999, and ending September*
 25 *30, 2024, shall pay to each eligible institution such*

1 *sums as may be necessary to pay to each eligible stu-*
 2 *dent (determined in accordance with section 420F)*
 3 *for each academic year during which that student is*
 4 *in attendance at an institution of higher education,*
 5 *as an undergraduate, a farmer opportunity grant in*
 6 *the amount for which that student is eligible, as deter-*
 7 *mined pursuant to subsection (b). Not less than 85*
 8 *percent of the sums shall be advanced to eligible insti-*
 9 *tutions prior to the start of each payment period and*
 10 *shall be based on an amount requested by the institu-*
 11 *tion as needed to pay eligible students, except that*
 12 *this sentence shall not be construed to limit the au-*
 13 *thority of the Secretary to place an institution on a*
 14 *reimbursement system of payment.*

15 “(2) *CONSTRUCTION.*—*Nothing in this section*
 16 *shall be construed to prohibit the Secretary from pay-*
 17 *ing directly to students, in advance of the beginning*
 18 *of the academic term, an amount for which the stu-*
 19 *dents are eligible, in cases where the eligible institu-*
 20 *tion elects not to participate in the disbursement sys-*
 21 *tem required by paragraph (1).*

22 “(3) *DESIGNATION.*—*Grants made under this*
 23 *subpart shall be known as ‘farmer opportunity*
 24 *grants’.*

25 “(b) *AMOUNT OF GRANTS.*—

1 “(1) *AMOUNTS.*—

2 “(A) *IN GENERAL.*—*The amount of the*
3 *grant for a student eligible under this subpart*
4 *shall be—*

5 “(i) *\$1,700 for each of the academic*
6 *years 1999–2000 through 2003–2004;*

7 “(ii) *\$2,000 for each of the academic*
8 *years 2004–2005 through 2008–2009;*

9 “(iii) *\$2,300 for each of the academic*
10 *years 2009–2010 through 2013–2014;*

11 “(iv) *\$2,600 for each of the academic*
12 *years 2014–2015 through 2018–2019; and*

13 “(v) *\$2,900 for each of the academic*
14 *years 2019–2020 through 2023–2024.*

15 “(B) *PART-TIME RULE.*—*In any case where*
16 *a student attends an institution of higher edu-*
17 *cation on less than a full-time basis (including*
18 *a student who attends an institution of higher*
19 *education on less than a half-time basis) during*
20 *any academic year, the amount of the grant for*
21 *which that student is eligible shall be reduced in*
22 *proportion to the degree to which that student is*
23 *not so attending on a full-time basis, in accord-*
24 *ance with a schedule of reductions established by*
25 *the Secretary for the purposes of this subpara-*

1 *graph, computed in accordance with this sub-*
 2 *part. The schedule of reductions shall be estab-*
 3 *lished by regulation and published in the Federal*
 4 *Register.*

5 “(2) *MAXIMUM.*—No grant under this subpart
 6 *shall exceed the cost of attendance (as described in*
 7 *section 472) at the institution at which that student*
 8 *is in attendance. If, with respect to any student, it*
 9 *is determined that the amount of a grant exceeds the*
 10 *cost of attendance for that year, the amount of the*
 11 *grant shall be reduced to an amount equal to the cost*
 12 *of attendance at the institution.*

13 “(3) *PROHIBITION.*—No grant shall be awarded
 14 *under this subpart to any individual who is incarcer-*
 15 *ated in any Federal, State, or local penal institution.*

16 “(c) *PERIOD OF ELIGIBILITY FOR GRANTS.*—

17 “(1) *IN GENERAL.*—The period during which a
 18 *student may receive grants shall be the period re-*
 19 *quired for the completion of the first undergraduate*
 20 *baccalaureate course of study being pursued by that*
 21 *student at the institution at which the student is in*
 22 *attendance, except that any period during which the*
 23 *student is enrolled in a noncredit or remedial course*
 24 *of study as described in paragraph (2) shall not be*
 25 *counted for the purpose of this paragraph.*

1 “(2) *CONSTRUCTION.*—*Nothing in this section*
 2 *shall be construed to—*

3 “(A) *exclude from eligibility courses of*
 4 *study that are noncredit or remedial in nature*
 5 *and that are determined by the institution to be*
 6 *necessary to help the student be prepared for the*
 7 *pursuit of a first undergraduate baccalaureate*
 8 *degree or certificate or, in the case of courses in*
 9 *English language instruction, to be necessary to*
 10 *enable the student to utilize already existing*
 11 *knowledge, training, or skills; and*

12 “(B) *exclude from eligibility programs of*
 13 *study abroad that are approved for credit by the*
 14 *home institution at which the student is enrolled.*

15 “(3) *PROHIBITION.*—*No student is entitled to re-*
 16 *ceive farmer opportunity grant payments concur-*
 17 *rently from more than 1 institution or from the Sec-*
 18 *retary and an institution.*

19 “(d) *APPLICATIONS FOR GRANTS.*—

20 “(1) *IN GENERAL.*—*The Secretary shall from*
 21 *time to time set dates by which students shall file ap-*
 22 *plications for grants under this subpart. The filing of*
 23 *applications under this subpart shall be coordinated*
 24 *with the filing of applications under section 401(c).*

1 “(2) *INFORMATION AND ASSURANCES.*—*Each stu-*
 2 *dent desiring a grant for any year shall file with the*
 3 *Secretary an application for the grant containing*
 4 *such information and assurances as the Secretary*
 5 *may deem necessary to enable the Secretary to carry*
 6 *out the Secretary’s functions and responsibilities*
 7 *under this subpart.*

8 “(e) *DISTRIBUTION OF GRANTS TO STUDENTS.*—*Pay-*
 9 *ments under this section shall be made in accordance with*
 10 *regulations promulgated by the Secretary for such purpose,*
 11 *in such manner as will best accomplish the purpose of this*
 12 *section. Any disbursement allowed to be made by crediting*
 13 *the student’s account shall be limited to tuition and fees*
 14 *and, in the case of institutionally owned housing, room and*
 15 *board. The student may elect to have the institution provide*
 16 *other such goods and services by crediting the student’s ac-*
 17 *count.*

18 “(f) *INSUFFICIENT FUNDING.*—*If, for any fiscal year,*
 19 *the funds made available to carry out this subpart from*
 20 *the [Tobacco Community Revitalization] **National To-***
 21 ***bacco Settlement** Trust Fund are insufficient to satisfy*
 22 *fully all grants for students determined to be eligible under*
 23 *section 420F, the amount of the grant provided under sub-*
 24 *section (b) shall be reduced on a pro rata basis among all*
 25 *eligible students.*

1 “(g) *TREATMENT OF INSTITUTIONS AND STUDENTS*
 2 *UNDER OTHER LAWS.*—Any institution of higher education
 3 that enters into an agreement with the Secretary to disburse
 4 to students attending that institution the amounts those stu-
 5 dents are eligible to receive under this subpart shall not be
 6 deemed, by virtue of the agreement, to be a contractor main-
 7 taining a system of records to accomplish a function of the
 8 Secretary. Recipients of farmer opportunity grants shall
 9 not be considered to be individual grantees for purposes of
 10 the Drug-Free Workplace Act of 1988 (41 U.S.C. 701 et
 11 seq.).

12 **“SEC. 420F. STUDENT ELIGIBILITY.**

13 “(a) *IN GENERAL.*—In order to receive any grant
 14 under this subpart, a student shall—

15 “(1) be a member of a tobacco farm family in
 16 accordance with subsection (b);

17 “(2) be enrolled or accepted for enrollment in a
 18 degree, certificate, or other program (including a pro-
 19 gram of study abroad approved for credit by the eligi-
 20 ble institution at which the student is enrolled) lead-
 21 ing to a recognized educational credential at an insti-
 22 tution of higher education that is an eligible institu-
 23 tion in accordance with section 487, and not be en-
 24 rolled in an elementary or secondary school;

1 “(3) if the student is presently enrolled at an in-
 2 stitution of higher education, be maintaining satisfac-
 3 tory progress in the course of study the student is
 4 pursuing in accordance with subsection (c);

5 “(4) not owe a refund on grants previously re-
 6 ceived at any institution of higher education under
 7 this title, or be in default on any loan from a student
 8 loan fund at any institution provided for in part D,
 9 or a loan made, insured, or guaranteed by the Sec-
 10 retary under this title for attendance at any institu-
 11 tion;

12 “(5) file with the institution of higher education
 13 that the student intends to attend, or is attending, a
 14 document, that need not be notarized, but that shall
 15 include—

16 “(A) a statement of educational purpose
 17 stating that the money attributable to the grant
 18 will be used solely for expenses related to attend-
 19 ance or continued attendance at the institution;
 20 and

21 “(B) the student’s social security number;
 22 and

23 “(6) be a citizen of the United States.

24 “(b) TOBACCO FARM FAMILIES.—

1 “(1) *IN GENERAL.*—For the purpose of subsection
2 (a)(1), a student is a member of a tobacco farm fam-
3 ily if during calendar year 1998 the student was—

4 “(A) an individual who—

5 “(i) is a participating tobacco pro-
6 ducer (as defined in section 1002 of the
7 LEAF Act); or

8 “(ii) is otherwise actively engaged in
9 the production of tobacco;

10 “(B) a spouse, son, daughter, stepson, or
11 stepdaughter of an individual described in sub-
12 paragraph (A);

13 “(C) an individual—

14 “(i) who was a brother, sister, step-
15 brother, stepsister, son-in-law, or daughter-
16 in-law of an individual described in sub-
17 paragraph (A); and

18 “(ii) whose principal place of residence
19 was the home of the individual described in
20 subparagraph (A); or

21 “(D) an individual who was a dependent
22 (within the meaning of section 152 of the Inter-
23 nal Revenue Code of 1986) of an individual de-
24 scribed in subparagraph (A).

1 “(2) *ADMINISTRATION.*—*On request, the Sec-*
 2 *retary of Agriculture shall provide to the Secretary*
 3 *such information as is necessary to carry out this*
 4 *subsection.*

5 “(c) *SATISFACTORY PROGRESS.*—

6 “(1) *IN GENERAL.*—*For the purpose of subsection*
 7 *(a)(3), a student is maintaining satisfactory progress*
 8 *if—*

9 “(A) *the institution at which the student is*
 10 *in attendance reviews the progress of the student*
 11 *at the end of each academic year, or its equiva-*
 12 *lent, as determined by the institution; and*

13 “(B) *the student has at least a cumulative*
 14 *C average or its equivalent, or academic stand-*
 15 *ing consistent with the requirements for gradua-*
 16 *tion, as determined by the institution, at the end*
 17 *of the second such academic year.*

18 “(2) *SPECIAL RULE.*—*Whenever a student fails*
 19 *to meet the eligibility requirements of subsection*
 20 *(a)(3) as a result of the application of this subsection*
 21 *and subsequent to that failure the student has aca-*
 22 *ademic standing consistent with the requirements for*
 23 *graduation, as determined by the institution, for any*
 24 *grading period, the student may, subject to this sub-*

1 *section, again be eligible under subsection (a)(3) for*
 2 *a grant under this subpart.*

3 *“(3) WAIVER.—Any institution of higher edu-*
 4 *cation at which the student is in attendance may*
 5 *waive paragraph (1) or (2) for undue hardship based*
 6 *on—*

7 *“(A) the death of a relative of the student;*

8 *“(B) the personal injury or illness of the*
 9 *student; or*

10 *“(C) special circumstances as determined by*
 11 *the institution.*

12 *“(d) STUDENTS WHO ARE NOT SECONDARY SCHOOL*
 13 *GRADUATES.—In order for a student who does not have a*
 14 *certificate of graduation from a school providing secondary*
 15 *education, or the recognized equivalent of the certificate, to*
 16 *be eligible for any assistance under this subpart, the student*
 17 *shall meet either 1 of the following standards:*

18 *“(1) EXAMINATION.—The student shall take an*
 19 *independently administered examination and shall*
 20 *achieve a score, specified by the Secretary, dem-*
 21 *onstrating that the student can benefit from the edu-*
 22 *cation or training being offered. The examination*
 23 *shall be approved by the Secretary on the basis of*
 24 *compliance with such standards for development, ad-*

1 *ministration, and scoring as the Secretary may pre-*
2 *scribe in regulations.*

3 “(2) *DETERMINATION.*—*The student shall be de-*
4 *termined as having the ability to benefit from the*
5 *education or training in accordance with such process*
6 *as the State shall prescribe. Any such process de-*
7 *scribed or approved by a State for the purposes of this*
8 *section shall be effective 6 months after the date of*
9 *submission to the Secretary unless the Secretary dis-*
10 *approves the process. In determining whether to ap-*
11 *prove or disapprove the process, the Secretary shall*
12 *take into account the effectiveness of the process in en-*
13 *abling students without secondary school diplomas or*
14 *the recognized equivalent to benefit from the instruc-*
15 *tion offered by institutions utilizing the process, and*
16 *shall also take into account the cultural diversity, eco-*
17 *nomie circumstances, and educational preparation of*
18 *the populations served by the institutions.*

19 “(e) *SPECIAL RULE FOR CORRESPONDENCE*
20 *COURSES.*—*A student shall not be eligible to receive a grant*
21 *under this subpart for a correspondence course unless the*
22 *course is part of a program leading to an associate, bach-*
23 *elor, or graduate degree.*

24 “(f) *COURSES OFFERED THROUGH TELECOMMUNI-*
25 *CATIONS.*—

1 “(1) RELATION TO CORRESPONDENCE
2 COURSES.—A student enrolled in a course of instruc-
3 tion at an eligible institution of higher education
4 (other than an institute or school that meets the defi-
5 nition in section 521(4)(C) of the Carl D. Perkins Vo-
6 cational and Applied Technology Education Act (20
7 U.S.C. 2471(4)(C))) that is offered in whole or in
8 part through telecommunications and leads to a rec-
9 ognized associate, bachelor, or graduate degree con-
10 ferred by the institution shall not be considered to be
11 enrolled in correspondence courses unless the total
12 amount of telecommunications and correspondence
13 courses at the institution equals or exceeds 50 percent
14 of the courses.

15 “(2) RESTRICTION OR REDUCTIONS OF FINAN-
16 CIAL AID.—A student’s eligibility to receive a grant
17 under this subpart may be reduced if a financial aid
18 officer determines under the discretionary authority
19 provided in section 479A that telecommunications in-
20 struction results in a substantially reduced cost of at-
21 tendance to the student.

22 “(3) DEFINITION.—For the purposes of this sub-
23 section, the term ‘telecommunications’ means the use
24 of television, audio, or computer transmission, includ-
25 ing open broadcast, closed circuit, cable, microwave,

1 *or satellite, audio conferencing, computer conferenc-*
 2 *ing, or video cassettes or discs, except that the term*
 3 *does not include a course that is delivered using video*
 4 *cassette or disc recordings at the institution and that*
 5 *is not delivered in person to other students of that in-*
 6 *stitution.*

7 *“(g) STUDY ABROAD.—Nothing in this subpart shall*
 8 *be construed to limit or otherwise prohibit access to study*
 9 *abroad programs approved by the home institution at*
 10 *which a student is enrolled. An otherwise eligible student*
 11 *who is engaged in a program of study abroad approved for*
 12 *academic credit by the home institution at which the stu-*
 13 *dent is enrolled shall be eligible to receive a grant under*
 14 *this subpart, without regard to whether the study abroad*
 15 *program is required as part of the student’s degree program.*

16 *“(h) VERIFICATION OF SOCIAL SECURITY NUMBER.—*
 17 *The Secretary, in cooperation with the Commissioner of So-*
 18 *cial Security, shall verify any social security number pro-*
 19 *vided by a student to an eligible institution under sub-*
 20 *section (a)(5)(B) and shall enforce the following conditions:*

21 *“(1) PENDING VERIFICATION.—Except as pro-*
 22 *vided in paragraphs (2) and (3), an institution shall*
 23 *not deny, reduce, delay, or terminate a student’s eligi-*
 24 *bility for assistance under this subpart because social*
 25 *security number verification is pending.*

1 “(2) *DENIAL OR TERMINATION.*—If there is a de-
 2 termination by the Secretary that the social security
 3 number provided to an eligible institution by a stu-
 4 dent is incorrect, the institution shall deny or termi-
 5 nate the student’s eligibility for any grant under this
 6 subpart until such time as the student provides docu-
 7 mented evidence of a social security number that is
 8 determined by the institution to be correct.

9 “(3) *CONSTRUCTION.*—Nothing in this subsection
 10 shall be construed to permit the Secretary to take any
 11 compliance, disallowance, penalty, or other regulatory
 12 action against—

13 “(A) any institution of higher education
 14 with respect to any error in a social security
 15 number, unless the error was a result of fraud on
 16 the part of the institution; or

17 “(B) any student with respect to any error
 18 in a social security number, unless the error was
 19 a result of fraud on the part of the student.”.

20 ***Subtitle D—Immunity***

21 ***SEC. 1041. GENERAL IMMUNITY FOR TOBACCO PRODUCERS***

22 ***AND TOBACCO WAREHOUSE OWNERS.***

23 Notwithstanding any other provision of this title, a
 24 participating tobacco producer, tobacco-related growers as-
 25 sociation, or tobacco warehouse owner or employee may not

1 *be subject to liability in any Federal or State court for any*
 2 *cause of action resulting from the failure of any tobacco*
 3 *product manufacturer, distributor, or retailer to comply*
 4 *with the National Tobacco Policy and Youth Smoking Re-*
 5 *duction Act.*

6 ***TITLE XI—MISCELLANEOUS***
 7 ***Subtitle A—Prohibitions Relating***
 8 ***to Tobacco Products and Children***

9 ***SEC. 1101. SHORT TITLE.***

10 *This subtitle may be cited as the “Tobacco Use by Mi-*
 11 *nors Prevention Act”.*

12 ***SEC. 1102. PROHIBITIONS RELATING TO TOBACCO PROD-***
 13 ***UCTS AND CHILDREN.***

14 *Chapter VIII of the Federal Food, Drug, and Cosmetic*
 15 *Act is amended by adding at the end the following:*

16 ***“SEC. 804. PROHIBITION ON SALE OR DISTRIBUTION OF TO-***
 17 ***BACCO PRODUCTS TO CHILDREN.***

18 *“(a) GENERAL RULE.—It shall be unlawful for any*
 19 *domestic concern or any officer, director, employee, or agent*
 20 *of such concern to make use of the mails or any means or*
 21 *instrumentality of interstate commerce to cause or contrib-*
 22 *ute, either directly or through a foreign subsidiary, joint*
 23 *venture, affiliate, or licensee, to—*

24 *“(1) the sale or distribution of tobacco products*
 25 *in a foreign country to children; or*

1 “(2) *the advertising or promotion of tobacco*
2 *products in a foreign country in a manner that does*
3 *not comply with Federal requirements for the adver-*
4 *tisement or promotion of tobacco products in the*
5 *United States*

6 “(b) *DEFENSE.—In an action brought to enforce sub-*
7 *section (a), it shall be an affirmative defense that the to-*
8 *bacco products involved were sold, distributed, advertised,*
9 *or promoted in the foreign country involved in a manner*
10 *that would be lawful if such conduct occurred in the United*
11 *States.*

12 **“SEC. 805. LABELING.**

13 *“It shall be unlawful for any domestic concern or any*
14 *officer, director, employee, or agent of such concern, either*
15 *directly or through a foreign subsidiary, joint venture, affil-*
16 *iate, or licensee, to make use of the mails or any means*
17 *or instrumentality of interstate commerce to cause or con-*
18 *tribute to the export from the United States or the sale or*
19 *distribution in, or export from, any other country any to-*
20 *bacco product the package of which does not contain a*
21 *warning label that—*

22 *“(1) is in the primary language or languages of*
23 *the country in which the tobacco product is sold or*
24 *distributed to consumers; and*

1 “(2) except for the requirement of paragraph
2 (1)—

3 “(A) complies with Federal requirements for
4 labeling of similar tobacco products manufac-
5 tured, imported, or packaged for sale or distribu-
6 tion in the United States; or

7 “(B) complies with the labeling require-
8 ments of the foreign country in which the prod-
9 uct is sold or distributed to consumers and which
10 labeling requirements the Secretary determines
11 are substantially similar to Federal requirements
12 and are adequately enforced by such country.”.

13 **SEC. 1103. ENFORCEMENT.**

14 Section 301 of the Federal Food, Drug, and Cosmetic
15 Act (21 U.S.C. 331) is amended by adding at the end the
16 following:

17 “(aa) To carry out an act made unlawful by section
18 804 or 805.”.

19 **SEC. 1104. REWARD.**

20 Section 303(b)(5) of the Federal Food, Drug, and Cos-
21 metic Act (21 U.S.C. 333(b)(5)) is amended by adding at
22 the end the following: “If a person provides information
23 leading to the institution of a criminal proceeding against,
24 and conviction of, a person for a violation of section
25 301(aa), such person shall be entitled to one-half of the

1 *criminal fine imposed and collected for such violation but*
 2 *not more than \$125,000.”.*

3 **SEC. 1105. DEFINITIONS.**

4 *Section 201 of the Federal Food, Drug, and Cosmetic*
 5 *Act (21 U.S.C. 321), as amended by section 101(a) of this*
 6 *Act is amended by adding at the end the following:*

7 “(ll) The term ‘domestic concern’ means—

8 “(1) any individual who is a citizen, national,
 9 or resident of the United States; and

10 “(2) any corporation, partnership, association,
 11 joint-stock company, business trust, unincorporated
 12 organization, or sole proprietorship which has its
 13 principal place of business in the United States or
 14 which is organized under the laws of a State of the
 15 United States or a territory, possession, or common-
 16 wealth of the United States.

17 “(mm) The term ‘children’ means individuals under
 18 the age of 18.”.

19 **SEC. 1106. AMENDMENTS TO PUBLIC HEALTH SERVICE ACT.**

20 (a) *IN GENERAL.*—*The Public Health Service Act (42*
 21 *U.S.C. 201 et seq.) is amended by adding at the end the*
 22 *following:*

1 **“TITLE XXVIII—NATIONAL EF-**
 2 **FORTS TO REDUCE YOUTH**
 3 **SMOKING**

4 **“Subtitle E—Reducing Youth Smok-**
 5 **ing and Tobacco-Related Dis-**
 6 **eases Through Research**

7 **“SEC. 2801. STUDY BY THE INSTITUTE OF MEDICINE.**

8 “(a) *CONTRACT.*—Not later than 60 days after the date
 9 of enactment of the National Tobacco Policy and Youth
 10 Smoking Reduction Act, the Secretary shall enter into a
 11 contract with the Institute of Medicine for the conduct of
 12 a study on the framework for a research agenda and re-
 13 search priorities to be used by the National Tobacco Task
 14 Force established under section 2802.

15 “(b) *CONSIDERATIONS.*—

16 “(1) *IN GENERAL.*—In developing the framework
 17 for the research agenda and research priorities under
 18 subsection (a) the Institute of Medicine shall focus on
 19 increasing knowledge concerning the biological, social,
 20 behavioral, public health, and community factors in-
 21 volved in the prevention of tobacco use, reduction of
 22 tobacco use, and health consequences of tobacco use.

23 “(2) *SPECIFIC CONSIDERATIONS.*—In the study
 24 conducted under subsection (a), the Institute of Medi-
 25 cine shall specifically consider—

1 “(A) public health and community research
2 relating to tobacco use prevention methods, in-
3 cluding public education, media, community
4 strategies;

5 “(B) behavioral research relating to addic-
6 tion and tobacco use;

7 “(C) health services research relating to to-
8 bacco product prevention and cessation treat-
9 ment methodologies;

10 “(D) surveillance and epidemiology research
11 relating to tobacco;

12 “(E) biomedical, including clinical, re-
13 search relating to prevention and treatment of
14 tobacco-related diseases; and

15 “(F) economic research relating to the re-
16 sponsiveness of youth smoking to price and other
17 economic factors.

18 “(c) *REPORT*.—Not later than 10 months after the date
19 on which the Secretary enters into the contract under sub-
20 section (a), the Institute of Medicine shall prepare and sub-
21 mit to the Secretary, the National Task Force, the Commit-
22 tee on Labor and Human Resources of the Senate, and the
23 Committee on Commerce of the House of Representatives,
24 a report that shall contain the findings and recommenda-

1 *tions of the Institute for the purposes described in subsection*
 2 *(b).*

3 “(d) *AUTHORIZATION OF APPROPRIATIONS.—There*
 4 *are authorized to be appropriated \$750,000 to carry out*
 5 *this section.*

6 **“SEC. 2802. NATIONAL TOBACCO TASK FORCE.**

7 “(a) *ESTABLISHMENT.—The Secretary shall establish*
 8 *a National Tobacco Task Force (referred to in this subtitle*
 9 *as the ‘National Task Force’) to foster coordination among*
 10 *public health agencies, academic bodies, and community*
 11 *groups that conduct or support tobacco-related biomedical,*
 12 *clinical, behavioral, health services, public health and com-*
 13 *munity, and surveillance and epidemiology research activi-*
 14 *ties.*

15 “(b) *COMPOSITION.—The National Task Force shall be*
 16 *composed of—*

17 “(1) *the Surgeon General;*

18 “(2) *the Director of the Office of Smoking and*
 19 *Health of the Centers for Disease Control and Preven-*
 20 *tion;*

21 “(3) *the Administrator of the Agency for Health*
 22 *Care Policy and Research;*

23 “(4) *the Director of the National Institutes of*
 24 *Health;*

1 “(5) *two representatives from non-governmental*
 2 *public health or tobacco control organizations; and*

3 “(6) *two representatives from State or local gov-*
 4 *ernment public health agencies and offices.*

5 “(c) *CHAIR.—The National Task Force shall be*
 6 *chaired by the Secretary, and shall be staffed by the Centers*
 7 *for Disease Control and Prevention.*

8 “(d) *DUTIES.—The Task Force shall—*

9 “(1) *in accordance with research agenda rec-*
 10 *ommended under section 2801, coordinate and advise*
 11 *tobacco-related research activities among Federal pub-*
 12 *lic health service agencies;*

13 “(2) *collect and make available to States and*
 14 *communities, through publication and other appro-*
 15 *priate means, evidence-based tobacco-related research*
 16 *results and recommendations and the practical appli-*
 17 *cation of such results; and*

18 “(3) *report on a biennial basis to the Secretary*
 19 *and the Committee on Labor and Human Resources*
 20 *of the Senate, and the Committee on Commerce of the*
 21 *House of Representatives on the current and planned*
 22 *activities of participating Federal agencies;*

23 “(e) *RESEARCH ACTIVITIES.—The research activities*
 24 *referred to in subsection (a) shall be designed to address*
 25 *tobacco-related research priorities, and shall include—*

1 “(1) the development of effective strategies to pre-
2 vent the use of tobacco products among youth;

3 “(2) an outline of cost-effective, accessible, and
4 successful methods for tobacco use cessation among
5 adults and youths who want to quit;

6 “(3) the development of breakthroughs in the un-
7 derstanding of the effects on the human body of nico-
8 tine and other non-tobacco constituents of tobacco
9 products; and

10 “(4) the development of an enhanced ability to
11 prevent and treat tobacco-related diseases.

12 **“SEC. 2803. RESEARCH ACTIVITIES OF THE CENTERS FOR**
13 **DISEASE CONTROL AND PREVENTION.**

14 “(a) *FUNDING.*—There are authorized to be appro-
15 priated from the National Tobacco Settlement Trust Fund
16 established by section **401** of the National Tobacco Policy
17 and Youth Smoking Reduction Act **9512 of the Inter-**
18 **nal Revenue Code of 1986**, other than from amounts
19 in the State Litigation Settlement Account, the following
20 amounts to carry out this section—

21 “(1) \$450,000,000 for each of the first 3 fiscal
22 years after the date of enactment of the National To-
23 bacco Policy and Youth Smoking Reduction Act;

24 “(2) \$505,000,000 for each of the 4th and 5th fis-
25 cal years after that date;

1 “(3) \$405,000,000 for each of the 6th and 7th fis-
2 cal years after that date;

3 “(4) \$360,000,000 for each of the 8th and 9th fis-
4 cal years after that date; and

5 “(5) \$305,000,000 for the 10th fiscal year after
6 that date.

7 “(b) *DUTIES.*—*The Director of the Centers for Disease*
8 *Control and Prevention, working in consultation with Na-*
9 *tional Task Force, shall carry out tobacco-related surveil-*
10 *lance and epidemiologic studies and develop tobacco control*
11 *and prevention strategies under this section.*

12 “(c) *TRIGGER.*—*No expenditures shall be made under*
13 *this section during any fiscal year in which the annual*
14 *amount appropriated for the Centers for Disease Control*
15 *and Prevention is less than the amount so appropriated for*
16 *the prior fiscal year.*

17 **“SEC. 2804. RESEARCH ACTIVITIES OF THE NATIONAL IN-**
18 **STITUTES OF HEALTH.**

19 “(a) *FUNDING.*—*There are authorized to be appro-*
20 *priated, from amounts in the National Tobacco Settlement*
21 *Trust Fund established by section [401 of the National To-*
22 *bacco Policy and Youth Smoking Reduction Act] 9512 of*
23 *the Internal Revenue Code of 1986, other than*
24 *from amounts in the State Litigation Settlement Account,*

1 to carry out this section \$2,500,000,000 for each of the fiscal
2 years 1999 through 2008.

3 “(b) *ESTABLISHMENT.*—The Secretary shall establish,
4 within the Office of the Director of the National Institutes
5 of Health, a Tobacco-Related Research Initiative (referred
6 to in this section as the ‘tobacco initiative’) to be headed
7 by the Director.

8 “(c) *EXPENDITURE OF FUNDS.*—The Director of the
9 National Institutes of Health acting through the tobacco
10 initiative, and in consultation with the National Tobacco
11 Task Force, shall provide funds to conduct or support epide-
12 miological, behavioral, biomedical, and social science re-
13 search (including the training of researchers) related to the
14 prevention and treatment of tobacco addiction, and the pre-
15 vention and treatment of diseases associated with tobacco
16 use.

17 “(d) *GUARANTEED MINIMUM.*—Of the funds made
18 available to the National Institutes of Health under this
19 section, not less than 33 percent of such funds shall be used
20 to support epidemiological, behavioral, and social science
21 research related to the prevention and treatment of tobacco
22 addiction.

23 “(e) *LIMITATION.*—Except as may be necessary to
24 study one of the specific purposes described in subsection
25 (f), funds made available under subsection (d) shall not be

1 *used to support neurobiological research, or research in*
 2 *which the behavior of an organism is observed for the pur-*
 3 *pose of determining activity at the cellular or molecular*
 4 *level.*

5 “(f) *NATURE OF RESEARCH.*—*Funds made available*
 6 *under subsection (d) shall be used to conduct or support*
 7 *research with respect to one or more of the following—*

8 “(1) *the epidemiology of tobacco use;*

9 “(2) *the etiology of tobacco use;*

10 “(3) *risk factors for tobacco use by children;*

11 “(4) *prevention of tobacco use by children, in-*
 12 *cluding school and community-based programs, and*
 13 *alternative activities;*

14 “(5) *the relationship between tobacco use, alcohol*
 15 *abuse and illicit drug abuse;*

16 “(6) *behavioral and pharmacological smoking*
 17 *cessation methods and technologies, including relapse*
 18 *prevention;*

19 “(7) *the toxicity of tobacco products and their*
 20 *ingredients;*

21 “(8) *the relative harmfulness of different tobacco*
 22 *products;*

23 “(9) *environmental exposure to tobacco smoke;*

24 “(10) *the impact of tobacco use by pregnant*
 25 *women on their fetuses; and*

1 “(11) the redesign of tobacco products to reduce
2 risks to public health and safety.

3 “(g) COORDINATION.—In carrying out tobacco-related
4 research under this section, the Director of the National In-
5 stitutes of Health, in coordination with the National To-
6 bacco Task Force, shall ensure appropriate coordination
7 with the research of other agencies, and shall avoid dupli-
8 cative efforts through all appropriate means, including
9 through the establishment of an Office of Tobacco-Related
10 Research.

11 “(h) OFFICE OF TOBACCO-RELATED RESEARCH.—

12 “(1) ESTABLISHMENT.—There is established
13 within the National Institutes of Health and Office of
14 Tobacco-Related Research (referred to in this sub-
15 section as the ‘Office’). The Office shall be headed by
16 a director to be appointed by the Secretary.

17 “(2) DUTIES.—The director of the Office shall—

18 “(A) in coordination with the National To-
19 bacco Task Force, identify tobacco-related re-
20 search projects that should be conducted or sup-
21 ported by the research institutes, and develop
22 such projects in cooperation with such institutes;

23 “(B) coordinate tobacco-related research
24 that is conducted or supported by the National
25 Institutes of Health;

1 “(C) through the activities of the National
2 Tobacco Task Force, take steps to further co-
3 operation and collaboration between the insti-
4 tutes of the National Institutes of Health and
5 other Federal agencies with respect to tobacco-re-
6 lated research conducted or supported by such
7 agencies;

8 “(D) ensure compliance with the funding
9 levels described in subsection (d) and the limita-
10 tion described in subsection (e);

11 “(E) annually recommend to Congress the
12 allocation of anti-tobacco research funds among
13 the national research institutes; and

14 “(F) establish a clearinghouse for informa-
15 tion about tobacco-related research conducted by
16 governmental and non-governmental bodies.

17 “(3) ADMINISTRATION.—The Director of the Na-
18 tional Institutes of Health shall set-aside not less than
19 1 percent and not more than 3 percent of the funds
20 made available under subsection (d) to administer the
21 Office.

22 “(i) TRIGGER.—No expenditure shall be made under
23 subsection (a) during any fiscal year in which the annual
24 amount appropriated for the National Institutes of Health

1 *is less than the amount so appropriated for the prior fiscal*
 2 *year.”.*

3 *(b) RESEARCH ON MINORITY SMOKING AND TOBACCO-*
 4 *RELATED DISEASES.—*

5 *Section 1707(b) of the Public Health Service Act (42*
 6 *U.S.C. 300u-6(b)) is amended by striking “(b) DUTIES.—*
 7 *The Secretary” and inserting the following:*

8 *“(b) DUTIES.—*

9 *“(1) IN GENERAL.—*

10 *“(A) INTERAGENCY COORDINATION.—With*
 11 *respect to minority health activities of the Public*
 12 *Health Service, and the National Institutes of*
 13 *Health, a representative of the Office of Minority*
 14 *Health within the Department of Health and*
 15 *Human Services, a representative of the Office of*
 16 *Minority Health within the National Institutes*
 17 *of Health, and a representative of the Surgeon*
 18 *General shall—*

19 *“(i) seek to assure coordination of re-*
 20 *search, service delivery and inclusion of*
 21 *community-based organizations related to*
 22 *tobacco-related diseases, prevention, and ces-*
 23 *sation programs for ethnic, socio-economic*
 24 *and culturally-diverse populations;*

1 “(ii) monitor and report to Congress
 2 biannually the amount of Federal funds
 3 targeted for research related to minority to-
 4 bacco-related diseases, research into effective
 5 smoking cessation programs that are cul-
 6 turally and linguistically appropriate,
 7 health service delivery, and for community-
 8 based organizations providing smoking pre-
 9 vention and cessation services, and report
 10 biannually to the Congress the demonstrated
 11 effectiveness of these programs.”.

12 **[(c) MEDICAID COVERAGE OF OUTPATIENT SMOKING**
 13 *CESSATION AGENTS.—Paragraph (2) of section 1927(d) of*
 14 *the Public Health Service Act (42 U.S.C. 1396r–8(d)) is*
 15 *amended—*

16 **[(1) by striking subparagraph (E) and redesign-**
 17 *ating subparagraphs (F) through (J) as subpara-*
 18 *graphs (E) through (I); and*

19 **[(2) by striking “drugs.” in subparagraph (F),**
 20 *as redesignated, and inserting “drugs, except agents,*
 21 *approved by the Food and Drug Administration,*
 22 *when used to promote smoking cessation.”.]*

23 **(c) ELIMINATION OF LIMITATION ON MEDIC-**
 24 **AID COVERAGE OF SMOKING CESSATION**
 25 **AGENTS.—Section 1927(d)(2) of the Social Secu-**

1 *urity Act (42 U.S.C. 1396r–8(d)(2)) is amended by*
 2 *striking subparagraph (E) and redesignating*
 3 *subparagraphs (F) through (J) as subpara-*
 4 *graphs (E) through (I), respectively.*

5 **SEC. 1107. BAN ON DISTRIBUTION OF TOBACCO PRODUCTS**
 6 **PRODUCED BY CHILD LABOR.**

7 *Section 307 of the Tariff Act of 1930 (19 U.S.C. 1307)*
 8 *is amended by inserting after “United States.” the follow-*
 9 *ing: “The provisions of this section apply with equal force*
 10 *to tobacco products produced or manufactured wholly or in*
 11 *part in any foreign country by **forced orland inden-***
 12 *tured child labor.”.*

13 ***Subtitle B—Federal Licensing of***
 14 ***Tobacco Product Distribution***

15 **SEC. 1121. LICENSING OF TOBACCO PRODUCT DISTRIBUTION.**
 16

17 *(a) IN GENERAL.—Except for any retailer licensed*
 18 *under section 224 of this Act, no domestic concern may en-*
 19 *gage in the manufacture, or distribution of tobacco products*
 20 *for sale, in the United States more than 1 year after the*
 21 *date of enactment of this Act, either directly or through its*
 22 *foreign subsidiaries, affiliates, joint ventures, or licensees,*
 23 *unless it is licensed to do so by the Secretary.*

24 ***[(b) FEE.—***

1 **[(1) IN GENERAL.**—*The annual license fee shall*
 2 *be \$1 per every 1000 cigarettes manufactured, or dis-*
 3 *tributed for sale, by a domestic concern either directly*
 4 *or through its foreign subsidiaries, affiliates, joint*
 5 *ventures, or licensees and an equivalent amount, as*
 6 *established by the Secretary, for other tobacco prod-*
 7 *ucts.*

8 **[(2) CREDIT.**—*In any year, a domestic concern*
 9 *shall receive as a credit towards that portion of its li-*
 10 *cence fee under clause (i) which is attributable to the*
 11 *manufacture of tobacco products subject to the Federal*
 12 *excise tax under section 5701 of the Internal Revenue*
 13 *Code of 1986 the amount of tax it paid under that*
 14 *section.]*

15 **(c) REGULATIONS.**—*Within 6 months after the date of*
 16 *the enactment of this Act, the Secretary shall promulgate*
 17 *regulations to implement the requirements of this section.*

18 **(d) PENALTY.**—*Any domestic concern which engages*
 19 *in the manufacture of cigarettes or other tobacco products*
 20 *either directly or through its foreign subsidiaries, affiliates,*
 21 *joint ventures, or licensees without the license required by*
 22 *subsection (a) shall be considered to have committed a pro-*
 23 *hibited act under section 301 of the Federal Food, Drug,*
 24 *and Cosmetic Act (21 U.S.C. 331).*

1 (e) *DOMESTIC CONCERN DEFINED.*—For purposes of
 2 this section, the term “domestic concern” means—

3 (1) *any individual who is a citizen, national, or*
 4 *resident of the United States;*

5 (2) *any corporation, partnership, association,*
 6 *joint-stock company, business trust, unincorporated*
 7 *organization, or sole proprietorship which has its*
 8 *principal place of business in the United States or*
 9 *which is organized under the laws of a State of the*
 10 *United States or a territory, possession, or common-*
 11 *wealth of the United States; and*

12 (3) *includes any person engaged in the manufac-*
 13 *ture, or distribution for sale, of cigarettes or other to-*
 14 *bacco products on Indian lands.*

15 ***Subtitle C—International*** 16 ***Provisions***

17 ***[SEC. 1131. INTERNATIONAL TOBACCO CONTROL TRUST*** 18 ***FUND.***

19 ***[(a) ESTABLISHMENT.***—There is established in the
 20 Treasury an International Tobacco Control Trust Fund (re-
 21 ferred to as the “International Trust Fund”) which shall
 22 be funded by the license fees collected under section 1121.

23 ***[(b) USE OF INTERNATIONAL TRUST FUND.***—Funds
 24 from the International Trust Fund shall be available for
 25 use as follows:

1 **[(1) AMERICAN CENTER ON GLOBAL HEALTH**
 2 **AND TOBACCO.—***Annual funds of \$150,000,000 may*
 3 *be used from the International Trust Fund for the*
 4 *American Center on Global Health and Tobacco as*
 5 *provided in appropriation Acts.*

6 **[(2) HEALTH AND HUMAN SERVICES.—***The Sec-*
 7 *retary of Health and Human Services may use the*
 8 *funds deposited in the International Trust Fund for*
 9 *grants and other forms of assistance to foreign gov-*
 10 *ernments, nongovernmental organizations, and inter-*
 11 *national organizations to support tobacco control ac-*
 12 *tivities in foreign countries as provided in appropri-*
 13 *ation Acts.*

14 **[(3) ENFORCEMENT.—***The Secretary may use*
 15 *funds deposited in the International Trust Fund for*
 16 *enforcement of any requirements related to the sale,*
 17 *distribution, marketing, or promotion of tobacco*
 18 *products internationally as provided in appropri-*
 19 *ation Acts.*

20 **SEC. 1131. INTERNATIONAL ENFORCEMENT.**

21 ***Funds appropriated from the National To-***
 22 ***bacco Settlement Trust Fund shall be avail-***
 23 ***able for use as follows:***

24 **(1) AMERICAN CENTER ON GLOBAL**
 25 **HEALTH AND TOBACCO.—***For the American*

1 ***Center on Global Health and Tobacco as***
2 ***provided in appropriation Acts.***

3 ***(2) HEALTH AND HUMAN SERVICES.—The***
4 ***Secretary of Health and Human Services***
5 ***may use such funds for grants and other***
6 ***forms of assistance to foreign govern-***
7 ***ments, nongovernmental organizations,***
8 ***and international organizations to sup-***
9 ***port tobacco control activities in foreign***
10 ***countries as provided in appropriation***
11 ***Acts.***

12 ***(3) ENFORCEMENT.—The Secretary may***
13 ***use such funds for enforcement of any re-***
14 ***quirements related to the sale, distribu-***
15 ***tion, marketing, or promotion of tobacco***
16 ***products internationally as provided in***
17 ***appropriation Acts.***

18 ***SEC. 1132. AMERICAN CENTER ON GLOBAL HEALTH AND TO-***
19 ***BACCO.***

20 ***(a) FINDINGS AND PURPOSE.—***

21 ***(1) FINDINGS.—Congress makes the following***
22 ***findings:***

23 ***(A) Tobacco use is estimated to have caused***
24 ***nearly 3,000,000 deaths a year worldwide in the***
25 ***early 1990's, and is projected to cause in excess***

1 *of 10,000,000 additional deaths a year globally*
2 *by 2030, more than any single disease. More*
3 *than 70 percent of those deaths are expected in*
4 *developing countries.*

5 *(B) Many countries are unprepared to ad-*
6 *dress increases in tobacco deaths, including the*
7 *impact on health systems and health costs. While*
8 *tobacco consumption in the United States and*
9 *other established market economies has fallen*
10 *over the last decade, consumption is rising in*
11 *China, India, East Asia, and former socialist*
12 *economies. Tobacco companies in the United*
13 *States and elsewhere have increasingly targeted*
14 *those markets.*

15 *(C) Tobacco use markedly reduces good*
16 *health and threatens to erode the major health*
17 *gains in life expectancy of the last century. Only*
18 *HIV/AIDS infection and tobacco are large and*
19 *growing causes of death and disease worldwide.*
20 *The total projected deaths from tobacco over the*
21 *next 10 years likely will exceed deaths from HIV/*
22 *AIDS, maternal and childhood conditions, and*
23 *tuberculosis combined.*

24 *(D) The United States consistently has pro-*
25 *vided leadership and funding to address the*

1 *world's most pressing public health needs, in-*
2 *cluding HIV/AIDS, hunger, maternal and child*
3 *health, and immunization.*

4 *(E) Through exports and overseas oper-*
5 *ations, United States tobacco companies sell*
6 *more cigarettes overseas than they do in the*
7 *United States. Foreign sales now account for*
8 *more than half of all sales for the 2 leading*
9 *United States tobacco product manufacturers.*

10 *(F) United States companies spend billions*
11 *of dollars on aggressive tobacco marketing cam-*
12 *paigns overseas that associate smoking with the*
13 *United States, affluence, freedom, and liberation.*
14 *In many markets, American companies reach*
15 *youthful audiences through television and radio*
16 *advertising, free samples, and other methods that*
17 *are outlawed in the United States.*

18 *(G) In light of the role the United States to-*
19 *bacco companies have played in spreading to-*
20 *bacco use globally, and in light of the large fi-*
21 *nancial benefits they continue to enjoy from to-*
22 *bacco exports, it is appropriate that this section*
23 *be enacted in order to provide assistance and*
24 *funding for international public education and*

1 *mass media programs to inform the public about*
 2 *the hazards of tobacco use.*

3 *(H) Smoking in United States films is per-*
 4 *vasive and influences persons in other countries*
 5 *who seek to emulate “American activities” de-*
 6 *scribed in motion pictures. According to one*
 7 *study, more than half of the top-grossing United*
 8 *States films released between 1991 and 1996 ex-*
 9 *hibited smoking. In these films, 80 percent of the*
 10 *male lead characters and 27 percent of the fe-*
 11 *male characters smoked. The motion picture in-*
 12 *dustry is painting a distorted picture that smok-*
 13 *ing is a truly American activity.*

14 *(2) PURPOSE.—The purpose of this section is to*
 15 *establish the American Center on Global Health and*
 16 *Tobacco (herein after referred to as “ACT”). ACT*
 17 *shall assist organizations in other countries to reduce*
 18 *and prevent the use of tobacco. Activities ACT shall*
 19 *support include—*

20 *(A) public education programs that inform*
 21 *the public about the hazards of tobacco use and*
 22 *of environmental tobacco smoke;*

23 *(B) mass media campaigns, including paid*
 24 *counter-tobacco advertisements, to reverse the*
 25 *image appeal of pro-tobacco messages, especially*

those that glamorize and “Westernize” tobacco use to young people; and

(C) education about the economic and societal costs of tobacco use, and effective tobacco use prevention and cessation strategies that are appropriate for the country involved.

(b) *ESTABLISHMENT.*—

(1) *IN GENERAL.*—There is hereby established in the District of Columbia a private, nonprofit corporation to be known as the American Center on Global Health and Tobacco. ACT shall—

(A) not be an agency or establishment of the United States; and

(B) except as otherwise provided in this section, be subject to, and have all the powers conferred upon a nonprofit corporation by the District of Columbia Nonprofit Corporation Act (D.C. Code section 29–501 et seq.).

(2) *RELATION TO UNITED STATES.*—Nothing in this section shall be construed as making ACT an agency or establishment of the United States, or as making the members of the Board of ACT, or its employees, officers or employees of the United States.

(3) *RELATION TO NONGOVERNMENTAL ORGANIZATIONS.*—ACT shall have a limited staff, and, to the

1 *maximum extent practicable, utilize the available ex-*
 2 *perience and talents of nongovernmental organiza-*
 3 *tions with specialized experience in health, education,*
 4 *media, and tobacco.*

5 (4) *GOVERNING BOARD.*—*ACT shall be governed*
 6 *by a board of up to 25 members including—*

7 (A) *on a bipartisan basis, Members of the*
 8 *Senate and of the House of Representatives;*

9 (B) *the heads of American public health or-*
 10 *ganizations;*

11 (C) *the heads of American media, market-*
 12 *ing, and other nongovernment institutions and*
 13 *corporations; and*

14 (D) *individuals active in education, public*
 15 *health, and other relevant activities.*

16 (5) *INTERNATIONAL ADVISORY COUNCIL.*—*An*
 17 *International Advisory Council consisting of rep-*
 18 *resentatives from key global, regional, and national*
 19 *public health organizations, and leading individual*
 20 *educators and health professionals shall provide advi-*
 21 *sory assistance to ACT.*

22 (c) *FUNDING.*—***Subject to appropriations, there***
 23 ***are authorized to be appropriated from the***
 24 ***National Tobacco Settlement Trust Fund,***
 25 ***other than amounts in the State Litigation***

1 ***Settlement Account, such sums as may be nec-***
 2 ***essary to carry out this section.***

3 ***[(1) DEFINITION OF TRUST FUND.—In this sec-***
 4 *tion, the term “Trust Fund” means the National To-*
 5 *bacco Settlement Trust Fund established by section*
 6 *401 of this Act, other than amounts in the State Liti-*
 7 *gation Settlement Account.*

8 ***[(2) ESTABLISHMENT OF GLOBAL PUBLIC***
 9 *HEALTH AND EDUCATION RESOURCE ACCOUNT.—*
 10 *There is established within the Trust Fund the Global*
 11 *Public Health and Education Resource Account that*
 12 *shall be credited with \$150,000,000 for each fiscal*
 13 *year.*

14 ***[(3) TRANSFER AUTHORITY.—The Secretary of***
 15 *the Treasury shall on October 1 of each fiscal year be-*
 16 *ginning after the date of enactment of this section,*
 17 *transfer \$150,000,000 from the Global Public Health*
 18 *and Education Resource Account of the Trust Fund*
 19 *to the account of ACT to carry out the activities au-*
 20 *thorized under this section.*

21 ***[(4) TERMINATION OF TRANSFER AUTHORITY.—***
 22 *The authority of the Secretary of the Treasury to*
 23 *transfer funds from the Trust Fund shall expire with*
 24 *the expiration of the Trust Fund.】*

1 (d) *REQUIREMENTS FOR ELIGIBILITY FOR ANNUAL*
2 *TRANSFERS FROM THE TRUST FUND.*—

3 (1) *OVERSIGHT.*—*ACT and its grantees shall be*
4 *subject to the oversight and supervision of Congress,*
5 *and shall annually submit a report of its activities to*
6 *Congress in accordance with paragraph (5)(A)(iii).*

7 (2) *COMPLIANCE.*—

8 (A) *FUNDING CONTINGENT ON COMPLI-*
9 *ANCE.*—*Annual payments from the Trust Fund*
10 *may be made to ACT under this section only if*
11 *ACT complies with the requirements specified in*
12 *this section.*

13 (B) *USE OF FUNDS.*—*ACT may only fund*
14 *programs for private sector groups, and may not*
15 *carry out programs directly. ACT may provide*
16 *funding only for programs which are consistent*
17 *with the purposes of this section.*

18 (3) *SALARIES AND COMPENSATION.*—

19 (A) *NO OTHER SOURCE OF COMPENSA-*
20 *TION.*—*Officers and employees of ACT may not*
21 *receive any salary or other compensation from*
22 *any source other than ACT for services per-*
23 *formed for ACT.*

24 (B) *UNITED STATES OFFICERS AND EM-*
25 *PLOYEES.*—*An individual who is an officer or*

1 *employee of the United States who also serves on*
 2 *the Board of Directors or as an officer or em-*
 3 *ployee of ACT, may not receive any compensa-*
 4 *tion or travel expenses in connection with serv-*
 5 *ices performed for ACT.*

6 (4) *STOCKS AND DIVIDENDS.—ACT shall not*
 7 *issue any shares of stock or declare or pay any divi-*
 8 *dends.*

9 (5) *AUDITS.—*

10 (A) *INDEPENDENT PUBLIC ACCOUNTANTS.—*

11 (i) *IN GENERAL.—The accounts of ACT*
 12 *shall be audited annually in accordance*
 13 *with generally accepted auditing standards*
 14 *by independent certified public accountants*
 15 *or independent licensed public accountants*
 16 *certified or licensed by a regulatory author-*
 17 *ity of a State or other political subdivision*
 18 *of the United States. The audits shall be*
 19 *conducted at the place or places where the*
 20 *accounts of ACT are normally kept. All*
 21 *books, accounts, financial records, reports,*
 22 *files, and all other papers, things, or prop-*
 23 *erty belonging to or in use by ACT and nec-*
 24 *essary to facilitate the audits shall be made*
 25 *available to the person or persons conduct-*

1 *ing the audits, and full facilities for verify-*
2 *ing transactions with any assets held by de-*
3 *positories, fiscal agents, and custodians*
4 *shall be afforded to such person or persons.*

5 *(ii) CONTENT OF AUDIT.—The report*
6 *of each audit conducted under clause (i)*
7 *shall be included in the annual report re-*
8 *quired under this subsection. The audit re-*
9 *port shall set forth the scope of the audit*
10 *and include such statements as are nec-*
11 *essary to present fairly ACT's assets and li-*
12 *abilities, surplus or deficit, with an analy-*
13 *sis of the changes therein during the year,*
14 *supplemented in reasonable detail by a*
15 *statement of the income and expenses of*
16 *ACT during the year, and a statement of*
17 *the application of funds, together with the*
18 *independent auditor's opinion of those state-*
19 *ments.*

20 *(iii) REPORT.—Not later than Decem-*
21 *ber 31 of each year, ACT shall submit an*
22 *annual report for the preceding fiscal year*
23 *to the President for transmittal to Congress.*
24 *The report shall include a comprehensive*
25 *and detailed report of ACT's operations, ac-*

1 *tivities, financial condition, and accom-*
 2 *plishments under this section and may in-*
 3 *clude such recommendations as ACT deems*
 4 *appropriate.*

5 *(B) COMPTROLLER GENERAL.—*

6 *(i) IN GENERAL.—The financial trans-*
 7 *actions of ACT for each fiscal year may be*
 8 *audited by the Comptroller General in ac-*
 9 *cordance with such principles and proce-*
 10 *dures and under such rules and regulations*
 11 *as the Comptroller General may prescribe.*
 12 *Any such audit shall be conducted at the*
 13 *place or places where accounts of ACT are*
 14 *normally kept. The Comptroller General*
 15 *shall have access to all books, accounts,*
 16 *records, reports, files, and all other papers,*
 17 *things, or property belonging to or in use by*
 18 *ACT pertaining to its financial trans-*
 19 *actions and necessary to facilitate the audit.*
 20 *All books, accounts, records, reports, files,*
 21 *papers, and property of ACT shall remain*
 22 *in the possession and custody of ACT.*

23 *(ii) REPORT.—A report of each audit*
 24 *shall be made by the Comptroller General to*
 25 *Congress. A copy of each report shall be fur-*

1 *nished to the President and to ACT at the*
2 *time the report is submitted to Congress.*

3 (6) *RECORDKEEPING.*—

4 (A) *IN GENERAL.*—*ACT shall ensure that*
5 *each recipient of assistance from ACT under this*
6 *section keeps such records as may be reasonably*
7 *necessary to fully disclose the amount and the*
8 *disposition by such recipient of the proceeds of*
9 *such assistance, the total cost of the project or*
10 *undertaking in connection with which such as-*
11 *sistance is given or used, and the amount and*
12 *nature of that portion of the cost of the project*
13 *or undertaking supplied by other sources, and*
14 *such other records as will facilitate an effective*
15 *audit.*

16 (B) *ACCESS.*—*ACT shall ensure that it, or*
17 *any of its duly authorized representatives, shall*
18 *have access for the purpose of audit and exam-*
19 *ination to any books, documents, papers, and*
20 *records of each recipient of assistance from ACT*
21 *that are pertinent to assistance provided through*
22 *ACT under this section.*

1 **SEC. 1133. PROHIBITION ON USE OF FUNDS TO FACILITATE**
 2 **THE EXPORTATION OR PROMOTION OF TO-**
 3 **BACCO.**

4 **[(a) IN GENERAL.**—*Notwithstanding any other provi-*
 5 *sion of law, no funds made available by appropriations or*
 6 *otherwise made available may be used by any officer, em-*
 7 *ployee, department, or agency of the United States—*

8 **[(1)** *to promote or encourage the export, re-ex-*
 9 *port, sale, manufacture, advertising, promotion, dis-*
 10 *tribution, or use of tobacco or tobacco products to or*
 11 *in a foreign country; or*

12 **[(2)** *to seek, through negotiation or otherwise,*
 13 *the removal or reduction by any foreign country of*
 14 *any restriction or proposed restriction in that coun-*
 15 *try on the importation, export, re-export, sale, manu-*
 16 *facture, advertising, promotion, distribution, packag-*
 17 *ing, labeling, use, content, imposition of tariffs, or*
 18 *taxation, of tobacco or tobacco products.*

19 **[(b) EXCEPTION.**—*Subsection (a)(2) shall not apply*
 20 *to any restriction or proposed restriction by a foreign coun-*
 21 *try if—*

22 **[(1)** *the restriction is applied in a manner*
 23 *which constitutes a means of arbitrary or unjustifi-*
 24 *able discrimination between countries;*

25 **[(2)** *the Secretary of Commerce certifies in writ-*
 26 *ing to Congress that the restriction is being applied*

1 *in a manner that constitutes a means of arbitrary or*
 2 *unjustifiable discrimination between countries; and*

3 **[(3)** *the Secretary of Health and Human Serv-*
 4 *ices certifies to Congress in writing that the restric-*
 5 *tion is not a reasonable means of protecting the pub-*
 6 *lic health.*

7 **[(c) DEFINITION.**—*In this section, the term “arbitrary*
 8 *or unjustifiable discrimination” means a restriction or pro-*
 9 *posed restriction by a foreign country that—*

10 **[(1)** *is arbitrary or unjustifiable; and*

11 **[(2)** *does not adhere to the principle of national*
 12 *treatment and applies less favorable treatment to*
 13 *goods that are imported into that country than the*
 14 *country applies to like goods that are the product,*
 15 *growth, or manufacture of that country.]*

16 ***No officer, employee, department, or agen-***
 17 ***cy of the United States may promote the sale***
 18 ***or export of tobacco or tobacco products, or***
 19 ***seek the reduction or removal of any foreign***
 20 ***country restrictions on the marketing of to-***
 21 ***bacco or tobacco products, if the restrictions***
 22 ***are applied in a nondiscriminatory manner.***
 23 ***Nothing in this section shall apply to any min-***
 24 ***isterial or clerical functions performed by any***

1 ***officer, employee, department, or agency of the***
 2 ***United States.***

3 ***[SEC. 1134. HARMONIZATION WITH UNITED STATES INTER-***
 4 ***NATIONAL COMMITMENTS AND OBLIGA-***
 5 ***TIONS.***

6 ***[The United States Trade Representative shall report***
 7 ***to the Congress within 90 days after the date of enactment***
 8 ***of this Act on any provisions of this Act that are inconsist-***
 9 ***ent with obligations of the United States under treaties or***
 10 ***other international agreements to which it is a signatory,***
 11 ***including any treaty pending ratification, together with***
 12 ***recommendations as to how to implement or modify the***
 13 ***provision without violating international law.]***

14 ***Subtitle D—Prevention of Tobacco***
 15 ***Smuggling***

16 ***SEC. 1141. DEFINITIONS.***

17 ***(a) INCORPORATION OF CERTAIN DEFINITIONS.—In***
 18 ***this subtitle, the terms “cigar”, “cigarette”, “person”, “pipe***
 19 ***tobacco”, “smokeless tobacco”, “State”, “tobacco product”,***
 20 ***and “United States” shall have the meanings given such***
 21 ***terms in sections 5702(a), 5702(b), 7701(a)(1), 5702(o),***
 22 ***5702(n)(1), 3306(j)(1), 5702(c), and 3306(j)(2) respectively***
 23 ***of the Internal Revenue Code of 1986.***

24 ***(b) OTHER DEFINITIONS.—In this subtitle:***

1 (1) *AFFILIATE.*—*The term “affiliate” means any*
2 *one of 2 or more persons if 1 of such persons has ac-*
3 *tual or legal control, directly or indirectly, whether by*
4 *stock ownership or otherwise, of the other or others of*
5 *such persons, and any one of 2 or more persons sub-*
6 *ject to common control, actual or legal, directly or in-*
7 *directly, whether by stock ownership or otherwise.*

8 (2) *INTERSTATE OR FOREIGN COMMERCE.*—*The*
9 *term “interstate or foreign commerce” means com-*
10 *merce between any State and any place outside there-*
11 *of, or commerce within any Territory or the District*
12 *of Columbia, or between points within the same State*
13 *but through any place outside thereof.*

14 (3) *SECRETARY.*—*The term “Secretary” means*
15 *the Secretary of the Treasury.*

16 (4) *PACKAGE.*—*The term “package” means the*
17 *innermost sealed container irrespective of the mate-*
18 *rial from which such container is made, in which a*
19 *tobacco product is placed by the manufacturer and in*
20 *which such tobacco product is offered for sale to a*
21 *member of the general public.*

22 (5) *RETAILER.*—*The term “retailer” means any*
23 *dealer who sells, or offers for sale, any tobacco product*
24 *to any person other than a wholesaler.*

1 **SEC. 1142. TOBACCO PRODUCT LABELING REQUIREMENTS.**

2 (a) *IN GENERAL.*—*It shall be unlawful for any person*
3 *to sell or ship or deliver for sale or shipment, or otherwise*
4 *introduce in interstate or foreign commerce, or to receive*
5 *therein, or to remove from customs custody for use, any to-*
6 *bacco product unless such product is packaged and labeled*
7 *in conformity with this section.*

8 (b) *LABELING.*—

9 (1) *IDENTIFICATION.*—*Not later than 1 year*
10 *after the date of enactment of this subtitle, the Sec-*
11 *retary shall promulgate regulations that require each*
12 *manufacturer of tobacco products to legibly print a*
13 *unique serial number on all packages of tobacco prod-*
14 *ucts manufactured for sale or distribution. Such se-*
15 *rial number shall be designed to enable the Secretary*
16 *to identify the manufacturer of the product, and the*
17 *location and date of manufacture. The Secretary shall*
18 *determine the size and location of the serial number.*

19 (2) *COUNTRY OF FINAL DESTINATION.*—*Each*
20 *package of a tobacco product that is exported shall be*
21 *labeled with the name of the country of final destina-*
22 *tion. The Secretary shall promulgate regulations to*
23 *determine the size and location of the label and under*
24 *what circumstances a waiver of this paragraph shall*
25 *be granted.*

1 (c) *PROHIBITION ON ALTERATION.*—*It shall be unlaw-*
 2 *ful for any person to alter, mutilate, destroy, obliterate, or*
 3 *remove any mark or label required under this subtitle upon*
 4 *a tobacco product in or affecting commerce, except as au-*
 5 *thorized by Federal law or except under regulations of the*
 6 *Secretary authorizing relabeling for purposes of compliance*
 7 *with the requirements of this section or of State law.*

8 **SEC. 1143. REQUIREMENTS FOR THE TRACKING OF TO-**
 9 **BACCO PRODUCTS.**

10 (a) *POSTING OF BOND.*—

11 (1) *IN GENERAL.*—*It shall be unlawful for any*
 12 *person to export any tobacco product unless such per-*
 13 *son—*

14 (A) *has posted with the Secretary a tobacco*
 15 *product bond in accordance with this section for*
 16 *such product that contains a disclosure of the*
 17 *country to which such product will be exported;*
 18 *and*

19 (B) *receives a written statement from the*
 20 *recipient of the tobacco products involved that*
 21 *such person—*

22 (i) *will not knowingly and willfully*
 23 *violate any law or regulation of such coun-*
 24 *try with respect to such products; and*

1 (ii) *has never been convicted of any of-*
 2 *fense with respect to tobacco products.*

3 (2) *REGULATIONS.—The Secretary shall promul-*
 4 *gate regulations that determine the frequency and the*
 5 *amount of each bond that must be posted under para-*
 6 *graph (1), but in no case shall such amount be less*
 7 *than an amount equal to the Federal tax imposed*
 8 *under chapter 52 of the Internal Revenue Code of*
 9 *1986 on the value of the shipment of the products in-*
 10 *volved if such products were consumed within the*
 11 *United States.*

12 (b) *RETURN OF BOND.—The Secretary shall return a*
 13 *bond posted under subsection (a) upon a determination by*
 14 *the Secretary (based on documentation provided by the per-*
 15 *son who posted the bond in accordance with regulations*
 16 *promulgated by the Secretary) that the tobacco products to*
 17 *which the bond applies have been received in the country*
 18 *of final destination as designated in the bond.*

19 **SEC. 1144. TOBACCO PRODUCT PERMITS.**

20 (a) *IN GENERAL.—Not later than 1 year after the date*
 21 *of enactment of this Act, the Secretary shall establish a pro-*
 22 *gram under which tobacco product permits are issued to*
 23 *persons (desiring to sell or ship, or deliver for sale or ship-*
 24 *ment, or otherwise introduce in interstate or foreign com-*

1 *merce, or to receive therein, or to remove from customs cus-*
 2 *tody for use, any tobacco product).*

3 (b) *CONDITIONS.*—*The issuance of a permit to a to-*
 4 *bacco product manufacturer under this section shall be con-*
 5 *ditioned upon the compliance of the manufacturer with the*
 6 *requirements of this subtitle.*

7 (c) *REVOCATION, SUSPENSION, AND ANNULMENT.*—
 8 *The program established under subsection (a) shall permit*
 9 *the Secretary to revoke, suspend, or annul a permit issued*
 10 *under this section if the Secretary determines that the terms*
 11 *or conditions of the permit have not been complied with.*
 12 *Prior to any action under this subsection, the Secretary*
 13 *shall provide the permittee with due notice and the oppor-*
 14 *tunity for a hearing.*

15 (d) *RECORDS AND AUDITS.*—*The Secretary shall,*
 16 *under the program established under subsection (a), require*
 17 *permit holders to keep records concerning the chain of cus-*
 18 *tody of the tobacco products that are the subject of the per-*
 19 *mit and make such records available to the Secretary for*
 20 *inspection and audit.*

21 (e) *RETAILERS.*—*This section shall not apply to retail-*
 22 *ers of tobacco products, except that retailers shall maintain*
 23 *commercial records of receipt, and such records shall be*
 24 *available to the Secretary for inspection and audit.*

1 **SEC. 1145. PROHIBITIONS.**

2 **[(a) IMPORTATION AND SALE.**—*It shall be unlawful,*
 3 *except under a permit issued by the Secretary under section*
 4 *1144—*

5 **[(1)** *to engage in the business of importing into*
 6 *the United States tobacco products; or*

7 **[(2)** *for any person so engaged to sell, offer, or*
 8 *deliver for sale, contract to sell, or ship, in or affect-*
 9 *ing commerce, directly or indirectly or through affili-*
 10 *ate, tobacco products so imported.*

11 **[(b) MANUFACTURE AND SALE.**—*It shall be unlawful,*
 12 *except under a permit issued by the Secretary under section*
 13 *1144—*

14 **[(1)** *to engage in the business of manufacturing,*
 15 *packaging or warehousing tobacco products; or*

16 **[(2)** *for any person so engaged to sell, offer, or*
 17 *deliver for sale, contract to sell, or ship, in interstate*
 18 *or foreign commerce, directly or indirectly or through*
 19 *an affiliate, tobacco products so manufactured, pack-*
 20 *aged or warehoused.*

21 **[(c) WHOLESALE.**—*It shall be unlawful, except under*
 22 *a permit issued by the Secretary under section 1144—*

23 **[(1)** *to engage in the business of purchasing for*
 24 *resale at wholesale tobacco products, or, as a prin-*
 25 *cipal or agent, to sell, offer for sale, negotiate for, or*
 26 *hold out by solicitation, advertisement, or otherwise*

1 *as selling, providing, or arranging for, the purchase*
 2 *for resale at wholesale of tobacco products; or*

3 **[(2) for any person so engaged to receive or sell,**
 4 *offer or deliver for sale, contract to sell, or ship, in*
 5 *or affecting commerce, directly or indirectly or*
 6 *through an affiliate, tobacco products so purchased.*

7 **[(d) EFFECTIVE DATE.—***The provisions of this section*
 8 *shall become effective on the date that is 180 days after the*
 9 *date of enactment of this Act.]*

10 **(a) IN GENERAL.—***It shall be unlawful, ex-*
 11 *cept pursuant to a permit issued by the Sec-*
 12 *retary under section 1144—*

13 **(1) to engage in the business of im-**
 14 *porting into the United States, manufac-*
 15 *turing, packaging, warehousing, or pur-*
 16 *chasing for resale at wholesale tobacco*
 17 *products, or, as a principal or agent, to*
 18 *sell, offer for sale, negotiate for, or hold*
 19 *out by solicitation, advertisement, or oth-*
 20 *erwise as selling, providing, or arranging*
 21 *for, the purchase for resale at wholesale*
 22 *of tobacco products; or*

23 **(2) for any person engaged in a busi-**
 24 *ness described in paragraph (1) to receive*
 25 *or sell, offer or deliver for sale, contract to*

1 *sell, or ship, in or affecting commerce, di-*
 2 *rectly or indirectly or through an affili-*
 3 *ate, tobacco products.*

4 ***(b) EFFECTIVE DATE.—The provisions of this***
 5 ***section shall become effective on the date that***
 6 ***is 180 days after the date of enactment of this***
 7 ***Act.***

8 ***SEC. 1146. PRICING AND LABELING OF PRODUCTS SOLD ON***
 9 ***MILITARY INSTALLATIONS OR BY NATIVE***
 10 ***AMERICANS.***

11 ***(a) MILITARY INSTALLATIONS.—***

12 ***(1) IN GENERAL.—The Secretary, in consultation***
 13 *with the Secretary of Defense, shall promulgate regu-*
 14 *lations that ensure that the price charged for a to-*
 15 *bacco product sold on a military installation (as de-*
 16 *fin ed in section 2801(c)(2) of title 10, United States*
 17 *Code) is equal to—*

18 ***(A) the average price for which such prod-***
 19 *uct is sold in the metropolitan area immediately*
 20 *bordering the military installation; or*

21 ***(B) the highest price (inclusive of Federal or***
 22 *State taxes) for which such product is sold on*
 23 *military installations located in the United*
 24 *States;*

25 *whichever is greater.*

1 (2) *LABEL.*—*The regulations under paragraph*
 2 *(1) shall require that each package of a tobacco prod-*
 3 *uct that is sold on a military installation be labeled*
 4 *as such. Such regulations shall include requirements*
 5 *for the size and location of the label.*

6 (b) *INDIAN TRIBES.*—*The Secretary, in consultation*
 7 *with the Secretary of Interior, shall promulgate regulations*
 8 *that require that each package of a tobacco product that*
 9 *is sold on an Indian reservation (as defined in section*
 10 *403(9) of the Indian Child Protection and Family Violence*
 11 *Prevention Act (25 U.S.C. 3202(9))) be labeled as such.*
 12 *Such regulations shall include requirements for the size and*
 13 *location of the label.*

14 **SEC. 1147. PROHIBITION AGAINST SALE OF TOBACCO PROD-**
 15 **UCTS IN OR TO DUTY-FREE SHOPS OR FOR-**
 16 **WARDING THROUGH OR MANUFACTURE IN**
 17 **TRADE ZONES.**

18 (a) *DUTY-FREE SHOPS.*—*It shall be unlawful for any*
 19 *person to sell a tobacco product—*

20 (1) *in any duty-free shop located within the*
 21 *United States; or*

22 (2) *to any duty-free shop.*

23 (b) *TRADE ZONES.*—*No person may forward through*
 24 *or manufacture a tobacco product in any foreign trade zone,*

1 *as defined for purposes of the Act of June 18, 1934 (19*
2 *U.S.C. 81a et seq.).*

3 **SEC. 1148. JURISDICTION; PENALTIES; COMPROMISE OF LI-**
4 **ABILITY.**

5 *(a) JURISDICTION.—The District Courts of the United*
6 *States, and the United States court for any Territory, of*
7 *the District where the offense is committed or of which the*
8 *offender is an inhabitant or has its principal place of busi-*
9 *ness, are vested with jurisdiction of any suit brought by*
10 *the Attorney General in the name of the United States, to*
11 *prevent and restrain violations of any of the provisions of*
12 *this subtitle.*

13 *(b) PENALTIES.—The provisions of section 3571 of*
14 *title 18, United States Code, shall apply to any person con-*
15 *victed of violating any of the provisions of this subtitle as*
16 *if such person were convicted of a felony under such title.*

17 *(c) COMPROMISE OF LIABILITY.—The Secretary is au-*
18 *thorized, with respect to any violation of this subtitle, to*
19 *compromise the liability arising with respect to a violation*
20 *of this subtitle—*

21 *(1) upon payment of a sum not in excess of*
22 *\$10,000 for each offense, to be collected by the Sec-*
23 *retary and to be paid into the Treasury as mis-*
24 *cellaneous receipts; and*

1 (2) *in the case of repetitious violations and in*
 2 *order to avoid multiplicity of criminal proceedings,*
 3 *upon agreement to a stipulation, that the United*
 4 *States may, on its own motion upon 5 days' notice*
 5 *to the violator, cause a consent decree to be entered*
 6 *by any court of competent jurisdiction enjoining the*
 7 *repetition of such violation.*

8 **SEC. 1149. AMENDMENTS TO THE CONTRABAND CIGARETTE**
 9 **TRAFFICKING ACT.**

10 (a) *DEFINITIONS.*—Section 2341 of title 18, United
 11 *States Code, is amended—*

12 (1) *in paragraph (2)—*

13 (A) *by striking “60,000” and inserting*
 14 *“30,000”; and*

15 (B) *by inserting after “payment of cigarette*
 16 *taxes,” the following: “or in the case of a State*
 17 *that does not require any such indication of tax*
 18 *payment, if the person in possession of the ciga-*
 19 *rettes is unable to provide any evidence that the*
 20 *cigarettes are moving legally in interstate com-*
 21 *merce,”; and*

22 (2) *in paragraph (4), by striking “and” at the*
 23 *end;*

24 (3) *in paragraph (5), by striking the period and*
 25 *inserting a semicolon; and*

1 (4) *by adding at the end the following:*

2 “(6) *the term ‘tobacco product’ means cigars,*
3 *cigarettes, smokeless tobacco, and pipe tobacco (as*
4 *such terms are defined in section 5701 of the Internal*
5 *Revenue Code of 1986); and*

6 “(7) *the term ‘contraband tobacco product’*
7 *means a quantity in excess of 30,000 of any tobacco*
8 *product that is manufactured, sold, shipped, deliv-*
9 *ered, transferred, or possessed in violation of Federal*
10 *laws relating to the distribution of tobacco products.”.*

11 (b) *UNLAWFUL ACTS.—Section 2342 of title 18, United*
12 *States Code, is amended—*

13 (1) *in subsection (a), by inserting “or contra-*
14 *band tobacco products” before the period;*

15 (2) *in subsection (b)—*

16 (A) *by striking “cigarettes” and inserting*
17 *“tobacco products”;*

18 (B) *by striking “60,000” and inserting*
19 *“30,000”; and*

20 (C) *by inserting before the period the follow-*
21 *ing: “or knowingly to fail to maintain distribu-*
22 *tion records, alter or obliterate required mark-*
23 *ings, or interfere with any inspection as required*
24 *with respect to such quantity of tobacco prod-*
25 *ucts”; and*

1 (3) *by adding at the end the following:*

2 “(c) *It shall be unlawful for any person knowingly to*
3 *transport tobacco products under a false bill of lading or*
4 *without any bill of lading.*”.

5 (c) *RECORDKEEPING.—Section 2343 of title 18, United*
6 *States Code, is amended—*

7 (1) *by striking “cigarettes” each place that such*
8 *appears and inserting “tobacco products”;*

9 (2) *in subsection (a), by striking “60,000” and*
10 *inserting “30,000”;*

11 (3) *in subsection (b), by striking “60,000” and*
12 *inserting “30,000”.*

13 (d) *PENALTIES.—Section 2344 of title 18, United*
14 *States Code, is amended—*

15 (1) *in subsection (c), by inserting “or contra-*
16 *band tobacco products” after “cigarettes”; and*

17 (2) *by adding at the end the following:*

18 “(d) *Any proceeds from the unlawful distribution of*
19 *tobacco products shall be subject to seizure and forfeiture*
20 *under section 981(a)(1)(C).*”.

21 **SEC. 1150. AUTHORIZATION OF APPROPRIATIONS.**

22 *There are authorized to be appropriated such sums as*
23 *may be necessary to carry out this subtitle.*

1 ***Subtitle E—Antitrust Exemption***

2 ***SEC. 1161. LIMITED ANTITRUST EXEMPTION.***

3 (a) *IN GENERAL.*—*The antitrust laws of the United*
4 *States (as defined in section 1 of the Clayton Act (15 U.S.C.*
5 *12) and any other statute in pari materia, and any similar*
6 *law of a State, do not apply to the joint discussion, consid-*
7 *eration, review, action, agreement, or understanding by or*
8 *among any participating tobacco product manufacturers,*
9 *for the purposes of, and limited to—*

10 (1) *entering into and complying with the Proto-*
11 *col, Trust Agreement, or Consent Decree;*

12 (2) *refusing to deal with a distributor, retailer,*
13 *or other seller of tobacco products who distributes such*
14 *products for sale to, or offers for sale or sells such*
15 *products to, underage persons, or who otherwise fails*
16 *to comply with the applicable requirements of the Act,*
17 *the Protocol, or Consent Decree; or*

18 (3) *submitting an application relating to a plan*
19 *or program of the type referred to in subsection (b)*
20 *of this section or, entering into, complying with or*
21 *otherwise carrying out the terms of, any plan or pro-*
22 *gram that has been approved under subsection (b) of*
23 *this section.*

24 (b) *APPROVAL BY ATTORNEY GENERAL.*—*The Attorney*
25 *General of the United States is authorized to approve, upon*

1 application by one or more participating tobacco product
 2 manufacturers, plans, or programs to reduce the use of to-
 3 bacco products by underage individuals. Before approving
 4 any such plan or program, the Attorney General shall deter-
 5 mine that approval is appropriate as part of the effort to
 6 reduce the use of tobacco products by underage individuals
 7 and will not have the effect of unduly restraining competi-
 8 tion. The Attorney General shall approve or disapprove any
 9 such application in writing within 90 days from the date
 10 it is received by the Department of Justice. Upon written
 11 withdrawal by the Attorney General of any approval under
 12 this subsection, the provisions of subsection (a)(3) shall not
 13 apply to any subsequent act or omission with respect to
 14 the plan or program to which the approval related.

15 **Subtitle F—Special Provisions Con-**
 16 **cerning Programs for Women,**
 17 **Minorities, and Others**

18 **SEC. 1171. RESEARCH RELATED TO PATTERNS OF SMOKING**

19 **BY WOMEN AND MINORITIES.**

20 (a) **RESEARCH DESIGN CRITERIA.**—Any research
 21 funded under this Act, or under any amendment made by
 22 this Act, that is conducted for the purpose of investigating
 23 factors affecting tobacco use and patterns of smoking, shall
 24 if appropriate to the scope and purpose of the investigation

1 *include data and analysis with respect to different factors*
2 *that may be present in the case of women or minorities.*

3 (b) *PATTERNS OF SMOKING.*—*Research funded under*
4 *this Act, or under any amendment made by this Act, exam-*
5 *ining patterns of smoking among minorities should be con-*
6 *ducted in proportion to their prevalence in the smoking*
7 *population and shall be conducted at minority education*
8 *institutions, where available, or institutions that provide*
9 *the greatest amount of health care to minority populations*
10 *in a State.*

11 **SEC. 1172. COUNTER-ADVERTISING PROGRAMS.**

12 (a) *IN GENERAL.*—*The Secretary shall carry out pro-*
13 *grams to reduce tobacco usage through media-based (such*
14 *as counter-advertising campaigns) and nonmedia-based*
15 *education, prevention, and cessation campaigns designed to*
16 *discourage the use of tobacco products by individuals and*
17 *to encourage those who use such products to quit. Such pro-*
18 *grams shall target, in a culturally and linguistically appro-*
19 *priate manner, adults, children, women, and minorities*
20 *who have been targeted by tobacco industry advertising.*

21 (b) *ELIGIBILITY.*—*To be eligible to receive assistance*
22 *under this section an entity or individual shall prepare and*
23 *submit to the Secretary an application at such time, in*
24 *such manner, and containing such information as the Sec-*
25 *retary may require.*

1 (c) *USE OF FUNDS.*—Amounts received by an individ-
 2 ual or entity under this section shall be used to carry out
 3 activities under the programs established under subsection
 4 (a). Such amounts may be used to design and implement
 5 such activities and to conduct research concerning the effec-
 6 tiveness of such programs.

7 (d) *FUNDING.*—There are authorized to be appro-
 8 priated from the National Tobacco Settlement Trust Fund
 9 【established by section 401】, other than from amounts not
 10 in the State Litigation Settlement Account, or otherwise ob-
 11 ligated under this Act such sums as are necessary to carry
 12 out the provisions of this section.

13 **SEC. 1173. PREVENTION ACTIVITIES OF COMMUNITY AND**
 14 **MIGRANT HEALTH CENTERS.**

15 (a) *FUNDING.*—There are authorized to be appro-
 16 priated from the National Tobacco Settlement Trust Fund
 17 【established by section 401】, other than from amounts in
 18 the State Litigation Settlement Account, 【of this Act
 19 \$300,000,000】 for each of the first 10 fiscal years beginning
 20 after the date of enactment of this Act to carry out the pro-
 21 visions of subsection (b).

22 (b) *PROGRAM.*—The Secretary shall make amounts
 23 made available under subsection (a) available to Commu-
 24 nity, Migrant, and Homeless Health Centers receiving
 25 grants under section 330 of the Public Health Service Act

1 *(42 U.S.C. 254c) to provide health services for diseases re-*
 2 *lated to tobacco and to prevent tobacco-related diseases.*

3 *(c) LIMITATION.—No amount may be expended or obli-*
 4 *gated under subsection (b) for any fiscal year in which the*
 5 *annual amount appropriated for Community, Migrant,*
 6 *and Homeless Health Centers is less than the amount ap-*
 7 *propriated for the previous fiscal year.*

8 ***Subtitle G—Sense of the Senate***

9 ***SEC. 1181. SENSE OF THE SENATE.***

10 *It is the sense of the Senate that the proceeds of this*
 11 *Act may be used for purposes including, but not limited*
 12 *to—*

13 *(1) reimbursing public health care financing*
 14 *programs for tobacco-related costs, including Medi-*
 15 *care;*

16 *(2) supporting tobacco use prevention and ces-*
 17 *sation, particularly with respect to youth, including*
 18 *counter-advertising at the Federal, State, Tribal, and*
 19 *local level;*

20 *(3) supporting tobacco-related health services re-*
 21 *search activities;*

22 *(4) assisting tobacco farmers and tobacco de-*
 23 *pendent communities;*

1 (5) *creating, and fully and adequately funding,*
 2 *a Tobacco Asbestos Trust to assist victims of the*
 3 *unique harm that smoking causes to asbestos workers;*

4 (6) *settling with and reimbursing States for to-*
 5 *bacco-related health care costs and damages, includ-*
 6 *ing Medicaid;*

7 (7) *providing funding for the Federal Black*
 8 *Lung Program;*

9 (8) *providing funding for child care and early*
 10 *childhood development;*

11 (9) *providing funding for veterans' benefit pro-*
 12 *grams; and*

13 (10) *providing funding for clinical trials at the*
 14 *National Institutes of Health.*

15 ***Subtitle H—Ban On Sale Of To-***
 16 ***bacco Products Through The Use***
 17 ***Of Vending Machines***

18 ***SEC. 1191. BAN OF SALE OF TOBACCO PRODUCTS THROUGH***
 19 ***THE USE OF VENDING MACHINES.***

20 (a) *BAN OF SALE OF TOBACCO PRODUCTS THROUGH*
 21 *THE USE OF VENDING MACHINES.—Effective 12 months*
 22 *after the date of enactment of this Act, it shall be unlawful*
 23 *to sell tobacco products through the use of a vending ma-*
 24 *chine.*

1 (b) *COMPENSATION FOR BANNED VENDING MA-*
 2 *CHINES.—*

3 (1) *IN GENERAL.—The owners and operators of*
 4 *tobacco vending machines shall be reimbursed for the*
 5 *fair market value of their businesses, including the*
 6 *cost of banned vending machines, compensation for*
 7 *lost profits, unexpired contracts, and for the owner’s*
 8 *or operator’s plant and equipment related only to the*
 9 *production of tobacco vending machines.*

10 (2) *TOBACCO VENDING REIMBURMENT CORPORA-*
 11 *TION.—*

12 (A) *CORPORATION.—Reimbursement shall be*
 13 *directed through a private, nonprofit corporation*
 14 *established in the District of Columbia, known as*
 15 *the Tobacco Vending Reimbursement Corporation*
 16 *(in this section referred to as the “Corporation”).*
 17 *The Corporation is—*

18 (i) *not an agency or establishment of*
 19 *the United States; and*

20 (ii) *except as otherwise provided in*
 21 *this section, is subject to, and has all the*
 22 *powers conferred upon a nonprofit corpora-*
 23 *tion by the District of Columbia Nonprofit*
 24 *Corporation Act (D.C. Code section 29-501*
 25 *et seq.).*

1 (B) *DUTIES.—The Corporation shall—*

2 (i) *disburse compensation funds to*
3 *vending companies under this section;*

4 (ii) *verify operational machines; and*

5 (iii) *maintain complete records of ma-*
6 *chine verification and accountings of dis-*
7 *bursements and administration of the com-*
8 *pensation fund established under paragraph*
9 *(4).*

10 (3) *MANAGEMENT OF CORPORATION.—*

11 (A) *BOARD OF DIRECTORS.—The Corpora-*
12 *tion shall be managed by a Board of Directors*
13 *that—*

14 (i) *consists of distinguished Americans*
15 *with experience in finance, public policy, or*
16 *fund management;*

17 (ii) *includes at least 1 member of the*
18 *United States tobacco vending machine in-*
19 *dustry;*

20 (iii) *shall be paid an annual salary on*
21 *an individualized basis of \$40,000 out of*
22 *amounts transferred to the Corporation*
23 *under paragraph (4)(A);*

1 (iv) shall appoint a President to man-
2 age the day-to-day activities of the Corpora-
3 tion;

4 (v) shall develop guidelines by which
5 the President shall direct the Corporation;

6 (vi) shall retain a national accounting
7 firm to verify the distribution of funds and
8 audit the compensation fund established
9 under paragraph (4);

10 (vii) shall retain such legal, manage-
11 ment, or consulting assistance as is nec-
12 essary and proper; and

13 (viii) shall periodically report to Con-
14 gress regarding the activities of the Cor-
15 poration.

16 (B) DUTIES OF THE PRESIDENT OF THE
17 CORPORATION.—The President of the Corpora-
18 tion shall—

19 (i) hire appropriate staff;

20 (ii) prepare the report of the Board of
21 Directors of the Corporation required under
22 subparagraph (A)(viii); and

23 (iii) oversee Corporation functions, in-
24 cluding verification of machines, adminis-
25 tration and disbursement of funds, mainte-

1 nance of complete records, operation of ap-
 2 peals procedures, and other directed func-
 3 tions.

4 (4) *COMPENSATION FUND.*—

5 (A) *TRANSFER OF FUNDS FROM TOBACCO*
 6 *INDUSTRY PAYMENTS.*—*The Secretary of the*
 7 *Treasury shall transfer to the Corporation, out of*
 8 *funds in the National Tobacco Settlement Trust*
 9 *Fund, other than from amounts in the State*
 10 *Litigation Settlement Account, such sums as are*
 11 ***[necessary] provided in appropriations***
 12 ***Acts*** *to make due compensation to owners and*
 13 *operators of tobacco vending machines and to*
 14 *carry out the duties of the Corporation. [Not*
 15 *later than 1 year after such date on which the*
 16 *first transfer is made under this subparagraph,*
 17 *the Secretary of the Treasury shall transfer to*
 18 *the Corporation out of funds paid to the United*
 19 *States by the tobacco industry, such additional*
 20 *sums as may be necessary for such purposes.]*

21 (B) *RULES FOR DISBURSEMENT OF*
 22 *FUNDS.*—

23 (i) *PAYMENTS TO OWNERS AND OPERA-*
 24 *TORS.*—*The Corporation shall disburse*
 25 *funds to compensate the owners and opera-*

tors of tobacco vending machines in accordance with the following:

(I) *The fair market value of each tobacco vending machine verified by the Corporation President in accordance with subparagraph (C), and proven to have been in operation before August 10, 1995, shall be disbursed to the owner of the machine seeking compensation.*

(II) *No compensation shall be made for a spiral glass front vending machine.*

(ii) *OTHER PAYMENTS.—Funds transferred to the Corporation under subparagraph (A) may be used to pay the administrative costs of the Corporation that are necessary and proper or required by law. The total amount paid by the Corporation for administrative and overhead costs, including accounting fees, legal fees, consultant fees, and associated administrative costs shall not exceed 5 percent of the total amount transferred to the Corporation under subparagraph (A).*

1 (C) VERIFICATION OF VENDING MA-
 2 CHINES.—*Verification of vending machines shall*
 3 *be based on copies of official State vending li-*
 4 *censes, company computerized or handwritten*
 5 *sales records, or physical inspection by the Cor-*
 6 *poration President or by an inspection agent*
 7 *designated by the President. The Corporation*
 8 *President and the Board of Directors of the Cor-*
 9 *poration shall work vigorously to prevent and*
 10 *prosecute any fraudulent claims submitted for*
 11 *compensation.*

12 (D) RETURN OF ACCOUNT FUNDS NOT DIS-
 13 TRIBUTED TO VENDORS.—*The Corporation shall*
 14 *be dissolved on the date that is 4 years after the*
 15 *date of enactment of this Act. Any funds not dis-*
 16 *persed or allocated to claims pending as of that*
 17 *date shall be transferred to [a public anti-smok-*
 18 *ing trust, or used for such other purposes as Con-*
 19 *gress may designate]* **the National To-**
 20 **bacco Settlement Trust Fund.**

21 (c) SETTLEMENT OF LEGAL CLAIMS PENDING
 22 AGAINST THE UNITED STATES.—*Acceptance of a com-*
 23 *penetration payment from the Corporation by a vending ma-*
 24 *chine owner or operator shall settle all pending and future*
 25 *claims of the owner or operator against the United States*

1 *that are based on, or related to, the ban of the use of tobacco*
 2 *vending machines imposed under this section and any other*
 3 *laws or regulations that limit the use of tobacco vending*
 4 *machines.*

5 *(d) AUTHORIZATION OF APPROPRIATIONS.—There are*
 6 *authorized to be appropriated from the National Tobacco*
 7 *Settlement Trust Fund, other than from amounts in the*
 8 *Senate Litigation Settlement Account, such sums as may*
 9 *be necessary to carry out this section.*

10 ***[TITLE XII—TOBACCO ASBESTOS*** 11 ***TRUST FUND***

12 ***[SEC. 1201. DEFINITIONS.***

13 ***[In this title:***

14 ***[(1) ASBESTOS CLAIM.—The term “asbestos***
 15 ***claim” means a claim brought or capable of being***
 16 ***brought in a court of competent jurisdiction by a per-***
 17 ***son for personal injury, wrongful death, loss of con-***
 18 ***sortium, or other damages arising from occupational***
 19 ***exposure to asbestos or asbestos containing products,***
 20 ***including claims by spouses or household members***
 21 ***who were exposed to asbestos through the occupational***
 22 ***exposure of another person.***

23 ***[(2) ASBESTOS CLAIMANT.—The term “asbestos***
 24 ***claimant” means a person who brings an asbestos***
 25 ***claim.***

1 **[(3) ASBESTOS DEFENDANT.**—*The term “asbes-*
 2 *tos defendant” means a person or existing entity (in-*
 3 *cluding a partnership or corporation) who as part of*
 4 *its operations is defending asbestos claims on the date*
 5 *of enactment of this Act.*

6 **[(4) ASBESTOS/TOBACCO CLAIM.**—*The term “as-*
 7 *bestos/tobacco claim” means a legally justiciable as-*
 8 *bestos claim of a person who also claims injury, dis-*
 9 *ease, or death arising from exposure to tobacco.*

10 **[(5) ASBESTOS/TOBACCO CLAIMANT.**—*The term*
 11 *“asbestos/tobacco claimant” means a person who has*
 12 *an asbestos/tobacco claim.*

13 **[(6) ASBESTOS TRUST.**—*The term “asbestos*
 14 *trust” means a court-supervised trust that was estab-*
 15 *lished to resolve asbestos claims arising directly or in-*
 16 *directly from exposure to asbestos or asbestos contain-*
 17 *ing products of an asbestos defendant, including a*
 18 *trust created under the bankruptcy laws of the United*
 19 *States, or Rule 23 of the Federal Rules of Civil Proce-*
 20 *dure.*

21 **[(7) EXPOSURE TO TOBACCO.**—*The term “expo-*
 22 *sure to tobacco” means any instance in which a per-*
 23 *son consumes, inhales, ingests, or uses a tobacco prod-*
 24 *uct.*

1 **[(8) TOBACCO.**—*The term “tobacco” means to-*
 2 *bacco in its manufactured form, including cigars,*
 3 *cigarettes, cigarillos, cigarette tobacco, little cigars,*
 4 *pipe tobacco, and smokeless tobacco.*

5 **[(9) TOBACCO COMPANY.**—*The term “tobacco*
 6 *company” means any person, including any repacker,*
 7 *or relabeler, who manufactures, fabricates, assembles,*
 8 *processes, or labels a finished tobacco product.*

9 **[(10) TRUST FUND.**—*The term “trust fund”*
 10 *means the Tobacco Asbestos Trust Fund established*
 11 *under section 1202.*

12 **[SEC. 1202. TOBACCO ASBESTOS TRUST FUND.**

13 **[(a) ESTABLISHMENT.**—

14 **[(1) IN GENERAL.**—*There is established in the*
 15 *Treasury of the United States a trust fund to be*
 16 *known as the “Tobacco Asbestos Trust Fund”, consist-*
 17 *ing of such amounts as may be appropriated or cred-*
 18 *ited to the trust fund.*

19 **[(2) DIVISION.**—

20 **[(A) IN GENERAL.**—*The trust fund shall be*
 21 *composed of 2 funds to be known as “Fund I”*
 22 *and “Fund II”. Each such fund shall meet the*
 23 *requirements of this title.*

24 **[(B) FUND I.**—

1 **[(i) ADMINISTRATION.**—*Fund I shall*
2 *be administered by the trustees appointed*
3 *under paragraphs (1) and (3) of subsection*
4 *(b). Fund I shall be considered to be a des-*
5 *ignated settlement fund within the meaning*
6 *of section 468B of the Internal Revenue*
7 *Code of 1986.*

8 **[(ii) PURPOSE AND USE.**—*The pur-*
9 *pose of Fund I shall be for the reimburse-*
10 *ment of asbestos trusts and asbestos defend-*
11 *ants for payments made by such trust and*
12 *defendants for the tobacco-caused portion of*
13 *asbestos/tobacco claims. Fund I shall be*
14 *used to allocate credits to asbestos trusts*
15 *and asbestos defendants who settled and*
16 *paid the civil claims of individuals who had*
17 *exposure to tobacco and asbestos. Such cred-*
18 *its may be used to direct the payment of*
19 *funds by the trustees to pay asbestos claims*
20 *and asbestos/tobacco claims, as described in*
21 *section 1203.*

22 **[(C) FUND II.**—

23 **[(i) ADMINISTRATION.**—*Fund II shall*
24 *be administered by the trustees appointed*
25 *under paragraphs (2) and (3) of subsection*

1 (b). *Fund II shall be considered to be a des-*
 2 *ignated settlement fund within the meaning*
 3 *of section 468B of the Internal Revenue*
 4 *Code of 1986.*

5 **[(i) PURPOSE.—***The purpose of Fund*
 6 *II shall be to pay asbestos/tobacco claims*
 7 *brought after the date of enactment of this*
 8 *Act for the tobacco-caused portion of the*
 9 *claimant's harm, as described in section*
 10 *1204.*

11 **[(3) SEPARATE OPERATIONS.—***The operations of*
 12 *each Fund shall be conducted separately. Upon ma-*
 13 *jority vote of the trustees of Fund I and upon major-*
 14 *ity vote of the trustees of Fund II, the Funds may,*
 15 *in the interest of efficiency and economy, conduct cer-*
 16 *tain tasks as a single operation.*

17 **[(b) TRUSTEES.—***Not later than 60 days after the*
 18 *date of enactment of this Act—*

19 **[(1) the Secretary shall appoint 2 individuals to**
 20 *serve as trustees of the trust fund, of which—*

21 **[(A) 1 individual shall represent asbestos**
 22 *trusts; and*

23 **[(B) 1 individual shall represent asbestos**
 24 *defendants;*

1 **[(2)** *the Secretary of Labor shall appoint 2 indi-*
 2 *viduals to serve as trustees of the trust fund, of*
 3 *which—*

4 **[(A)** *1 individual shall represent asbestos*
 5 *claimants; and*

6 **[(B)** *1 individual shall represent labor or-*
 7 *ganizations with asbestos claimants as members;*
 8 *and*

9 **[(3)** *the trustees appointed under paragraphs*
 10 *(1) and (2) shall appoint an individual who shall be*
 11 *a member of the health care profession with experi-*
 12 *ence in asbestos disease or disability to serve as a*
 13 *trustee.*

14 **[(c)** *AUTHORIZATION AND ALLOCATIONS.—*

15 **[(1)** *AUTHORIZATION.—There are appropriated,*
 16 *out of amounts in the National Tobacco Settlement*
 17 *Trust Fund established by section 401 (other than*
 18 *amounts in the State Litigation Settlement Account*
 19 *or otherwise obligated), to the trust fund the amounts*
 20 *set forth in section 1205. The Secretary of the Treas-*
 21 *ury shall transfer amounts appropriated under this*
 22 *paragraph to the trust fund.*

23 **[(2)** *ALLOCATION BETWEEN FUNDS.—Of the*
 24 *amounts transferred under paragraph (1), 50 percent*

1 *shall be deposited into Fund I and 50 percent shall*
 2 *be deposited into Fund II.*

3 **[(B) TIMING ADJUSTMENT.—***The trustees of*
 4 *Fund II may provide an advance to Fund I as*
 5 *a loan (to be repaid from proceeds of Fund I)*
 6 *from funds available in Fund II as may be nec-*
 7 *essary to further the purposes of Fund I.*

8 **[(d) REPAYABLE ADVANCES.—**

9 **[(1) AUTHORIZATION.—***In addition to the*
 10 *amounts appropriated under subsection (c), there are*
 11 *authorized to be appropriated to the trust fund, as re-*
 12 *payable advances, such sums as may be necessary for*
 13 *fiscal year 1999 and each subsequent fiscal year to*
 14 *make the expenditures described in sections 1203 and*
 15 *1204.*

16 **[(2) REPAYMENT WITH INTEREST.—***Repayable*
 17 *advances made to the trust fund shall be repaid, and*
 18 *interest on the advances shall be paid to the general*
 19 *fund of the Treasury when the Secretary of the Treas-*
 20 *ury determines that monies are available in the To-*
 21 *bacco Asbestos Trust Fund to make the payments.*

22 **[(3) RATE OF INTEREST.—***Interest on an ad-*
 23 *vance made under this subsection shall be at a rate*
 24 *determined by the Secretary of the Treasury (as of the*
 25 *close of the calendar month preceding the month in*

1 *which the advance is made) that is equal to the cur-*
 2 *rent average market yield on outstanding marketable*
 3 *obligations of the United States with remaining pe-*
 4 *riod to maturity comparable to the anticipated period*
 5 *during which the advance will be outstanding.*

6 **[(e) USE OF TRUST FUND.—**

7 **[(1) IN GENERAL.—***The trust fund shall be used*
 8 *as provided for in this title. No amount shall be ex-*
 9 *pended or obligated from the trust fund unless the ex-*
 10 *penditure or obligation is authorized by an appro-*
 11 *priation Act.*

12 **[(2) LIMITATION.—***Amounts may only be made*
 13 *available from the trust fund to, or for the direct ben-*
 14 *efit of, asbestos claimants and asbestos/tobacco claim-*
 15 *ants.*

16 **[(f) AUTHORITY OF TRUSTEES.—**

17 **[(1) DECISIONS BASED ON VOTES.—***Except as*
 18 *provided in this Act, the trustees of each Fund shall*
 19 *make decisions with regard to the respective Funds*
 20 *based on a majority vote.*

21 **[(2) GENERAL AUTHORITY.—***The trustees shall*
 22 *have the authority to take such actions as may be nec-*
 23 *essary to effectuate the purposes of the trust fund, in-*
 24 *cluding—*

1 **[(A)** *the investment of the trust fund assets*
2 *in a reasonable and prudent manner consistent*
3 *with the needs and purposes of the trust fund;*
4 *and*

5 **[(B)** *commencing actions to enforce any*
6 *provisions or obligations imposed under this*
7 *title.*

8 **[(3) ADMINISTRATIVE AUTHORITY.—***The trustees*
9 *shall have the authority to employ officers, adminis-*
10 *trators, claims analysts, attorneys, actuaries, invest-*
11 *ment specialists, and such other employees and agents*
12 *as may be required to administer the trust fund.*

13 **[(g) ACCOUNTING FOR EXPENSES.—***Except for the*
14 *compensation and expenses of the trustees, which shall be*
15 *charged equally to Fund I and Fund II, the trustees shall,*
16 *to the extent feasible, separately account for all salaries,*
17 *overhead, and other costs and expenses as between Fund I*
18 *and Fund II on the basis of activities conducted separately*
19 *with respect to each such Fund.*

20 **[(h) EXPENDITURES FROM TRUST FUND.—***Amounts*
21 *in the trust fund, and each of its Funds, shall be made*
22 *available in each fiscal year, as provided by appropriations*
23 *Acts, as necessary to make the expenditures and allocations*
24 *provided for in sections 1203 and 1204.*

1 **【SEC. 1203. PAYMENTS FROM FUND I.**

2 **【(a) IN GENERAL.**—*Credits applying to the amounts*
 3 *deposited into Fund I shall be allocated and disbursed as*
 4 *provided for in this section.*

5 **【(b) DETERMINATION OF BASE.**—

6 **【(1) NOTICE.**—*Not later than 90 days after the*
 7 *date on which the trustees for Fund I are appointed,*
 8 *the trustees shall provide notice to all asbestos trusts*
 9 *and asbestos defendants of the establishment of the*
 10 *Fund.*

11 **【(2) REQUEST FOR INFORMATION.**—*The notice*
 12 *under paragraph (1) shall request that each asbestos*
 13 *trust and asbestos defendant, within a reasonable pe-*
 14 *riod of time, provide the trustees with information as*
 15 *to the amount of payments or settlements made by or*
 16 *on behalf of such trusts or defendants (and, in the*
 17 *case of non-bankruptcy trusts, also made by or on be-*
 18 *half of their predecessor organizations), and the*
 19 *amount of any outstanding bonded judgments, on as-*
 20 *bestos claims as of the date of enactment of this Act.*

21 **【(3) DETERMINATION.**—*Based on the informa-*
 22 *tion provided under paragraph (2), the trustees for*
 23 *Fund I shall determine the total amount of payments*
 24 *and settlements and outstanding bonded judgments*
 25 *(reasonably adjusted for the probable resolution as of*
 26 *the date the information is submitted under para-*

graph (2)) on the asbestos claims of all asbestos trusts
and asbestos defendants that responded to the notice.

【(c) ALLOCATION OF CREDITS.—

【(1) IN GENERAL.—Upon review of the information submitted under subsection (b)(2), the trustees for Fund I shall provide a credit with respect to each asbestos trust and asbestos defendant submitting such information.

【(2) AMOUNT.—A credit under paragraph (1) with respect to an asbestos trust or asbestos defendant shall be based on the ratio of—

【(A) the amount of settlement payments and outstanding bonded judgments on asbestos claims made by or on behalf of the trust or defendant; and

【(B) the total amount of settlement payments and outstanding bonded judgments on asbestos claims made by or on behalf of all asbestos trusts and asbestos defendants described in paragraph (1).

【(d) ADDITIONAL FACTORS.—

【(1) INTEREST.—In making the allocation of credits under this section, the trustees for Fund I shall consider the timing of past cash payments and

1 include an appropriate interest factor in making
2 their allocation determinations.

3 **[(2) UNPAID SETTLEMENTS.—***In making the al-*
4 *location of credits under this section, the trustees for*
5 *Fund I shall include the settlements of asbestos trusts*
6 *and asbestos defendants that have not been paid as of*
7 *the date of enactment of this Act in an amount not*
8 *to exceed 20 percent of the amount of such unpaid set-*
9 *tlements.*

10 **[(3) LIMITATION.—***The aggregate amount of*
11 *Fund I credits allocated to asbestos trusts or asbestos*
12 *defendants to account for unpaid settlements under*
13 *paragraph (2) shall not exceed an amount equal to 6*
14 *percent of the amounts contained in Fund I for the*
15 *year involved. Any necessary reductions from the ap-*
16 *plication of the limitation under this paragraph shall*
17 *be determined using the ratios described in subsection*
18 *(c).*

19 **[(4) UNUSED CREDITS.—***To the extent that any*
20 *asbestos trust or asbestos defendant has credits from*
21 *its allocation under this section that have not been the*
22 *subject of a request and direction to be paid for a pe-*
23 *riod of 2 years from the date on which such credits*
24 *are made available, such unused credits shall be re-*
25 *allocated proportionally to each asbestos trust and as-*

1 *bestos defendant submitting information under sub-*
 2 *section (b)(2) according to the amount of the unpaid*
 3 *settlements of such trust and defendants which remain*
 4 *unpaid after making the allocations required by this*
 5 *section.*

6 **[(e) REVIEW OF DETERMINATIONS.—**

7 **[(1) IN GENERAL.—***Any dispute regarding a de-*
 8 *termination made by the trustees for Fund I under*
 9 *this section shall be resolved not later than 6 months*
 10 *after the date on which notice of such dispute is pro-*
 11 *vided to the trustees. Such resolution shall be under*
 12 *final and binding arbitration under the rules of the*
 13 *American Arbitration Association.*

14 **[(2) SCOPE.—***The scope of any review under*
 15 *paragraph (1) shall be limited to determining whether*
 16 *the determinations of the trustees were unsupported*
 17 *by substantial evidence or were contrary to law.*

18 **[(3) APPLICATION OF SECTION.—***During the*
 19 *pendency of any dispute resolution proceeding under*
 20 *this subsection, the trustees may continue to imple-*
 21 *ment the provisions of this section, reserving sufficient*
 22 *monies as may be necessary in their judgment to sat-*
 23 *isfy the resolution of such disputes.*

24 **[(f) USE OF FUND I CREDITS.—**

1 **[(1) FOR BENEFIT OF VICTIMS.—***All monies*
 2 *credited to asbestos trusts and asbestos defendants*
 3 *under this section shall be used solely for the payment*
 4 *of asbestos claims and asbestos/tobacco claims. None of*
 5 *the credits allocated under this section to an asbestos*
 6 *trust or asbestos defendant shall be used for the costs*
 7 *of defending against an asbestos claims, for payment*
 8 *of corporate dividends, for reimbursement of insurers,*
 9 *or for any other corporate purpose.*

10 **[(2) MECHANISM FOR PAYMENT OF VICTIMS.—**

11 **[(A) ASBESTOS DEFENDANTS.—***An asbestos*
 12 *defendant that receives an allocation of credit*
 13 *under this section may only use such credit to*
 14 *direct that a payment be made from Fund I to*
 15 *any asbestos claimant as compensation for an*
 16 *asbestos claim or asbestos/tobacco claim. The*
 17 *payment of such claimant shall be under a writ-*
 18 *ten request submitted by the defendant to the*
 19 *Fund. Such requests are not subject to approval*
 20 *by the Fund so long as they do not exceed the de-*
 21 *fendant's allocation of credit under this section.*

22 **[(B) ASBESTOS TRUST.—***All monies result-*
 23 *ing from credits allocated to an asbestos trust*
 24 *under this section shall be paid to such trust for*
 25 *use according to the rules of such trust with re-*

1 *gard to the payment of asbestos claims and as-*
 2 *bestos/tobacco claims.*

3 ***[SEC. 1204. PAYMENTS FROM FUND II.***

4 ***[(a) IN GENERAL.—****Amounts deposited into II shall*
 5 *be disbursed as provided for in this section.*

6 ***[(b) ESTABLISHMENT OF FUND.—****The trustee for*
 7 *Fund II shall establish procedures and standards under*
 8 *subsection (c) for the payment, upon approval of an appro-*
 9 *priate application, of a reasonable reimbursement for the*
 10 *costs, expenses, and fees incurred in connection with an as-*
 11 *bestos claim or an asbestos/tobacco claim.*

12 ***[(c) PROCEDURES AND STANDARDS.—****The procedures*
 13 *and standards established under this subsection for the pay-*
 14 *ment of compensation to asbestos claimants and asbestos/*
 15 *tobacco claimants, shall include—*

16 ***[(1) rules to ensure that compensation from***
 17 *Fund II is paid only for that portion of an asbestos*
 18 *claimant's or an asbestos/tobacco claimant's harm*
 19 *caused by exposure to tobacco;*

20 ***[(2) rules ensuring that—***

21 ***[(A) all present and future such claimants***
 22 *are treated equitably in relationship to each*
 23 *other; and*

24 ***[(B) if future demands against Fund II re-***
 25 *quire limitations on current payment, that pri-*

1 *ority be given to payment of asbestos claimants*
2 *or asbestos/tobacco claimants with the most seri-*
3 *ous harm due to exposure to asbestos and to-*
4 *bacco;*

5 **[(3)** *rules establishing application forms and*
6 *procedures for the submission of claims and support-*
7 *ing documentation;*

8 **[(4)** *criteria establishing a minimum degree of*
9 *asbestos disability or impairment that must be dem-*
10 *onstrated in order for a claimant to receive com-*
11 *ensation under this section;*

12 **[(5)** *criteria for the coordination of the adminis-*
13 *tration of Fund II with the signatories to the Louisi-*
14 *ana Agreement Providing Administrative Alternatives*
15 *for Claimants with Asbestos Related Conditions to ex-*
16 *pand the agreement to include national coverage for*
17 *claimants who may not be compensated under the cri-*
18 *teria provided for under paragraph (4);*

19 **[(6)** *rules requiring recipients of funds from*
20 *Fund II to execute a release of personal injury claims*
21 *for tobacco-caused harm; and*

22 **[(7)** *rules to ensure that the administration of*
23 *the claims process, including attorney's fees, is fair*
24 *and equitable to asbestos claimants and asbestos/to-*
25 *bacco claimants.*

1 **[(d) PERIOD FOR FINAL DETERMINATIONS.**—*The*
 2 *trustees for Fund II shall make a final determination with*
 3 *respect to a claim submitted under this section not later*
 4 *than 120 days after the date on which the claim is submit-*
 5 *ted. In the event that exigent circumstances exist with re-*
 6 *spect to a such a claim, as verified by a competent medical*
 7 *professional, such final determination shall be made as soon*
 8 *as practicable, but in no case later than 60 days after the*
 9 *date of the submission of such claim.*

10 **[(e) NO LIMITATION ON RIGHT TO SUE.**—*Except as*
 11 *provided in section 1206(b), nothing in this title shall be*
 12 *construed to limit the rights of any individual to bring a*
 13 *civil suit against a tobacco company.*

14 **[(f) CLAIMS ADMINISTRATION.**—*The trustees for Fund*
 15 *II may establish, or enter into a contract for the establish-*
 16 *ment or operation of, a claims facility for the processing,*
 17 *evaluation, and settlement of claims submitted to Fund II.*

18 **[(g) REVIEW JURISDICTION.**—*The District Courts of*
 19 *the United States shall have exclusive jurisdiction, without*
 20 *regard to the amount in controversy or the citizenship of*
 21 *the parties, to review a determination (or failure to make*
 22 *a determination as required by section 1206(a)) by or on*
 23 *behalf of the trustees with respect to compensation under*
 24 *Fund II by an individual bringing a claim. No such deter-*
 25 *mination may be overturned or remanded if it is supported*

1 *by substantial evidence. A claimant may not file a proceed-*
 2 *ing under this subsection unless the plaintiff has provided*
 3 *the trustees with a notice of intent of the plaintiff to file*
 4 *such an action, at least 90 days prior to the filing of such*
 5 *action.*

6 **[SEC. 1205. TRANSFERS FROM NATIONAL TOBACCO SETTLE-**
 7 **MENT TRUST FUND.**

8 **[(a) SPECIAL ASBESTOS-TOBACCO VICTIM TRANS-**
 9 **FERS.—***Beginning with calendar year 1999, the Secretary*
 10 *of the Treasury shall, for each calendar year, transfer from*
 11 *the National Tobacco Settlement Trust Fund established*
 12 *under section 401 (other than from amounts in the State*
 13 *Litigation Settlement Account) the amounts sufficient to*
 14 *provide the trust fund established by section 1202 the follow-*
 15 *ing amounts:*

16 **[(1) For calendar year 1999, \$1,000,000,000.**

17 **[(2) For calendar year 2000, \$1,500,000,000.**

18 **[(3) For calendar year 2001, \$3,000,000,000.**

19 **[(4) For calendar year 2002, \$3,000,000,000.**

20 **[(5) For calendar year 2003, \$3,000,000,000.**

21 **[(6) For calendar year 2004, \$4,000,000,000.**

22 **[(7) For each of the calendar years 2005**
 23 **through 2014, \$550,000,000.**

1 **[(b) PAYMENTS.**—*The Secretary of the Treasury shall*
 2 *ensure that transfers are made under this section on a time-*
 3 *ly basis.*

4 **[SEC. 1206. RULES FOR CLAIMS AGAINST ASBESTOS**
 5 **TRUSTS, ASBESTOS DEFENDANTS, AND TO-**
 6 **BACCO COMPANIES.**

7 **[(a) PURPOSE.**—

8 **[(1) IN GENERAL.**—*It is the purpose of this title*
 9 *to ensure that asbestos claimants and asbestos/tobacco*
 10 *claimants who are eligible, by reason of harm result-*
 11 *ing from exposure to asbestos and tobacco, to receive*
 12 *compensation on a fair and timely basis.*

13 **[(2) RULE OF CONSTRUCTION.**—*Nothing in this*
 14 *title shall be construed to expand the rights of asbestos*
 15 *claimants and asbestos/tobacco claimants in civil ac-*
 16 *tions pending (or resolved) against asbestos defend-*
 17 *ants or asbestos trusts on the date of enactment of this*
 18 *Act.*

19 **[(b) NON-BINDING SUBMISSION OF TOBACCO/ASBES-**
 20 **TOS CLAIMS TO FUND II.**—

21 **[(1) IN GENERAL.**—*A civil action by an indi-*
 22 *vidual for harm caused by the combined effects of to-*
 23 *bacco and asbestos shall not proceed to trial or result*
 24 *in a judgment against an asbestos defendant or asbes-*
 25 *tos trust until a claim is submitted to Fund II by*

1 *such individual and finally resolved in accordance*
 2 *with section 1204(c)(3) as determined by the trustees*
 3 *for Fund II. For purposes of this paragraph, the term*
 4 *“proceed to trial” means—*

5 **[(A)** *in a jury trial, to commence voir dire;*

6 *and*

7 **[(B)** *in a nonjury trial, to begin the trial.*

8 **[(2) DENIAL OF CLAIM.—***A claimant whose*
 9 *claim under paragraph (1) is denied, or who rejects*
 10 *an offer made by the trustees for Fund II, may pro-*
 11 *ceed to judgment or trial. All claimants shall receive*
 12 *a final determination from Fund II within 120 days*
 13 *after submission of a claim. In the event of exigent*
 14 *circumstances, verified by a competent medical profes-*
 15 *sional, a claimant shall receive a final determination*
 16 *from Fund II as soon as practicable, but in all events*
 17 *within 60 days after submission.*

18 **[(c) LIABILITY OF TOBACCO COMPANIES.—**

19 **[(1) IN GENERAL.—***The provisions of this sub-*
 20 *section limiting the civil liability of tobacco compa-*
 21 *nies shall remain in effect so long as the transfers and*
 22 *deposits are made in accordance with the provisions*
 23 *of this title.*

24 **[(2) CLAIMS OF ASBESTOS-TOBACCO VICTIMS.—**

25 *Any claimant who receives a payment from Fund II,*

1 *shall execute a release of liability for all tobacco-*
2 *caused harm.*

3 **[(3) CONTRIBUTION CLAIMS FOR PAST AMOUNTS**
4 *PAID.—Notwithstanding any other provision of law,*
5 *no tobacco company shall be liable for contribution,*
6 *indemnity, or otherwise to any asbestos trust or asbes-*
7 *tos defendant on any claim arising from payments or*
8 *obligations for payments to asbestos claimants and*
9 *asbestos/tobacco claimants made or incurred prior to*
10 *the date of enactment of this Act. All such claims by*
11 *asbestos defendants or asbestos trusts filed as of the*
12 *date of enactment of this Act are terminated.*

13 **[(4) CONTRIBUTION CLAIMS FOR FUTURE**
14 *AMOUNTS.—Notwithstanding any other provision of*
15 *law, in any contribution or similar action against a*
16 *tobacco company arising from the payments or obli-*
17 *gations for payments to asbestos claimants and asbes-*
18 *tos/tobacco claimants made or incurred after the date*
19 *of enactment of this Act, an asbestos trust or asbestos*
20 *defendant may aggregate and establish a claim based*
21 *on valid statistical proof on a consolidated basis. In*
22 *such an action, the assessment of damages to a to-*
23 *bacco company defendant shall be based upon the de-*
24 *gree of relative causation as between asbestos and to-*

1 *bacco based on statistical data applicable to relevant*
 2 *disease categories.*

3 **[(5) RIGHTS RESERVED.**—*Nothing in this sub-*
 4 *section shall be construed to limit the rights of any*
 5 *person that chooses not to receive compensation from*
 6 *Fund II to commence a civil action against any to-*
 7 *bacco company.*

8 **[(d) LIABILITY OF ASBESTOS TRUSTS AND ASBESTOS**
 9 **DEFENDANTS.**—

10 **[(1) ACCEPTANCE OF FUND II AWARD.**—*A*
 11 *claimant who accepts a payment from Fund II shall*
 12 *execute a release of liability for all tobacco-caused*
 13 *harm, and shall not recover from an asbestos defend-*
 14 *ant in any civil action any damages for any portion*
 15 *of the harm caused by exposure to tobacco.*

16 **[(2) FUND II CLAIMANT'S RIGHT TO SUE.**—*A*
 17 *claimant, whose claim has been denied by the trustees*
 18 *for Fund II, or who has rejected the offer of a pay-*
 19 *ment from Fund II, may pursue a civil action*
 20 *against a tobacco defendant or asbestos defendant for*
 21 *personal injury attributable to both tobacco and as-*
 22 *bestos, to the extent that such action is otherwise per-*
 23 *missible under applicable law.*

24 **[(3) SUCCESSION TO CLAIMANT'S RIGHTS.**—*Any*
 25 *asbestos defendant that pays a part or all of a judg-*

1 *ment that includes damages for tobacco-caused harm*
 2 *may elect—*

3 **[(A)** *to—*

4 **[(i)** *succeed to the rights of the claim-*
 5 *ant involved, in the same proportion that*
 6 *the payment by the defendant in the action*
 7 *involved bears to the total amount of the*
 8 *judgment; and*

9 **[(ii)** *to request compensation on behalf*
 10 *of the claimant from Fund II as in the*
 11 *same manner as if the claimant had made*
 12 *a timely and proper election to receive such*
 13 *compensation, and on the same basis as*
 14 *other claimants similarly situated; or*

15 **[(B)** *to pursue an action for indemnity or*
 16 *contribution against any tobacco company.*

17 **[(4) CONTRIBUTION CLAIMS AGAINST ASBESTOS**
 18 *COMPANIES.—An asbestos trust or asbestos defendant*
 19 *shall not be liable to a tobacco company for contribu-*
 20 *tion, indemnity, or otherwise with respect to any*
 21 *claim arising from payments or obligations for pay-*
 22 *ments to asbestos claimants or for exposure to tobacco*
 23 *and asbestos made or incurred either prior to or by*
 24 *virtue of, the enactment of this Act. All such claims*

1 *filed as of the date of enactment of this Act are termi-*
 2 *nated.*

3 **[(e) PRESERVATION OF JOINT LIABILITY FOR ASBES-**
 4 **TOS-CAUSED INJURY OR CONDITION.—***Nothing in this title*
 5 *shall be construed to—*

6 **[(1) limit any joint liability under otherwise**
 7 *applicable law among asbestos defendants or asbestos*
 8 *trusts for the portion of a claimant’s harm caused by*
 9 *asbestos;*

10 **[(2) limit the ability of any individual to claim**
 11 *that his or her harm was caused by asbestos; or*

12 **[(3) delay the resolution of a claim brought by**
 13 *any individual against an asbestos trust or asbestos*
 14 *defendant for compensation for harm caused by asbes-*
 15 *tos.]*

16 **TITLE XIII—VETERANS’**
 17 **BENEFITS**

18 **SEC. 1301. RECOVERY BY SECRETARY OF VETERANS AF-**
 19 **FAIRS.**

20 *Title 38, United States Code, is amended by adding*
 21 *after part VI the following:*

1 **“PART VII—RECOVERY OF COMPENSATION COSTS**

2 **FOR TOBACCO-RELATED DISABILITY OR DEATH**

3 **“CHAPTER 91—TORT LIABILITY FOR DISABILITY OR**

4 **DEATH DUE TO TOBACCO USE**

“Sec.

“9101. *Recovery by Secretary of Veterans Affairs*

“9102. *Regulations*

“9103. *Limitation or repeal of other provisions for recovery of compensation*

“9104. *Exemption from annual limitation on damages*

5 **“§ 9101. *Recovery by Secretary of Veterans Affairs***

6 “(a) *CONDITIONS; EXCEPTIONS; PERSONS LIABLE;*
7 *AMOUNT OF RECOVERY; SUBROGATION.—In any case in*
8 *which the Secretary is authorized or required by law to pro-*
9 *vide compensation under this title for disability or death*
10 *from injury or disease attributable in whole or in part to*
11 *the use of tobacco products by a veteran during the veterans*
12 *active military, naval, or air service under circumstances*
13 *creating a tort liability upon a participating tobacco prod-*
14 *uct manufacturer, distributor, or retailer of a tobacco prod-*
15 *uct (other than or in addition to the United States) to pay*
16 *damages therefor, the Secretary shall have a right to recover*
17 *(independent of the rights of the injured or diseased veteran)*
18 *from said participating tobacco product manufacturer, dis-*
19 *tributor, or retailer the cost of the compensation paid or*
20 *to be paid and shall, as to this right, be subrogated to any*
21 *right or claim that the injured or diseased veteran, his or*
22 *her guardian, personal representative, estate, dependents, or*

1 survivors has against such third person to the extent of the
2 cost of the compensation paid or to be paid.

3 “(b) *ENFORCEMENT PROCEDURE; INTERVENTION;*
4 *JOINDER OF PARTIES; STATE OR FEDERAL COURT PRO-*
5 *CEEDINGS.*—*The Secretary may, to enforce such right under*
6 *subsection (a) of this section:*

7 “(1) *intervene or join in any action or proceed-*
8 *ing brought by the injured or diseased veteran, his or*
9 *her guardian, personal representative, estate, depend-*
10 *ents, or survivors, against the participating tobacco*
11 *product manufacturer, distributor, or retailer of a to-*
12 *bacco product who is liable for the injury or disease;*
13 *or*

14 “(2) *if such action or proceeding is not com-*
15 *menced within six months after the first day on*
16 *which compensation is paid by the Secretary in con-*
17 *nection with the injury or disease involved, institute*
18 *and prosecute legal proceedings against the partici-*
19 *pating tobacco product manufacturer, distributor, or*
20 *retailer of a tobacco product who is liable for the in-*
21 *jury or disease, in a State or Federal court, either*
22 *alone (in its own name or in the name of the injured*
23 *veteran, his or her guardian, personal representative,*
24 *estate, dependents, or survivors) or in conjunction*
25 *with the injured or diseased veteran, his or her guard-*

1 *ian, personal representative, estate, dependents, or*
 2 *survivors.*

3 “(c) *CREDITS TO APPROPRIATIONS.—Any amount re-*
 4 *covered or collected under this section for compensation*
 5 *paid by the Secretary shall be credited to a revolving fund*
 6 *established in the Treasury of the United States known as*
 7 *the Department of Veterans Affairs Tobacco Recovery Fund*
 8 *(hereafter called the Fund). The Fund shall be available to*
 9 *the Secretary without fiscal year limitation for purposes*
 10 *of veterans benefit programs, including administrative*
 11 *costs. The Secretary may transfer such funds as deemed nec-*
 12 *essary to the various Department of Veterans Affairs appro-*
 13 *priations, which shall remain available until expended.*

14 “(d) *DEFINITION.—For purposes of this section, the*
 15 *term participating tobacco product manufacturer, distribu-*
 16 *tor, or retailer of a tobacco product means a manufacturer,*
 17 *distributor, or retailer of tobacco products that has entered*
 18 *into a consent decree as such term is defined in section 701*
 19 *of the National Tobacco Policy and Youth Smoking Reduc-*
 20 *tion Act and that is a signatory to the Protocol as such*
 21 *term is defined in section 6 of that Act.*

22 **“§ 9102. Regulations**

23 “(a) *DETERMINATION AND ESTABLISHMENT OF*
 24 *PRESENT VALUE OF COMPENSATION TO BE PAID.—The Sec-*
 25 *retary may prescribe regulations to carry out this chapter,*

1 *including regulations with respect to the determination and*
2 *establishment of the present value of compensation to be*
3 *paid to an injured or diseased veteran or his or her surviv-*
4 *ing spouse, child, or parent.*

5 “(b) *SETTLEMENT, RELEASE AND WAIVER OF*
6 *CLAIMS.—To the extent prescribed by regulations under*
7 *subsection (a) of this section, the Secretary may—*

8 “(1) *compromise, or settle and execute a release*
9 *of, any claim which the Secretary has by virtue of the*
10 *right established by section 9101 of this title; or*

11 “(2) *waive any such claim, in whole or in part,*
12 *for the convenience of the Government, or if he or she*
13 *determines that collection would result in undue*
14 *hardship upon the veteran who suffered the injury or*
15 *disease or his or her surviving spouse, child or parent*
16 *resulting in payment of compensation.*

17 “(c) *DAMAGES RECOVERABLE FOR PERSONAL INJURY*
18 *UNAFFECTED.—No action taken by the Secretary in connec-*
19 *tion with the rights afforded under this chapter shall oper-*
20 *ate to deny to the injured veteran or his or her surviving*
21 *spouse, child or parent the recovery for that portion of his*
22 *or her damage not covered hereunder.*

1 ***“§ 9103. Limitation or repeal of other provisions for***
 2 ***recovery of compensation***

3 *“This chapter does not limit or repeal any other provi-*
 4 *sion of law providing for recovery by the Secretary of the*
 5 *cost of compensation described in section 9101 of this title.*

6 ***“§ 9104. Exemption from annual limitation on dam-***
 7 ***ages***

8 *“Any amount recovered under section 9101 of this title*
 9 *for compensation paid or to be paid by the Secretary for*
 10 *disability or death from injury or disease attributable in*
 11 *whole or in part to the use of tobacco products by a veteran*
 12 *during the veterans active military, naval, or air service*
 13 *shall not be subject to the limitation on the annual amount*
 14 *of damages for which the participating tobacco product*
 15 *manufacturers, distributors, and retailers may be found lia-*
 16 *ble as provided in the National Tobacco Policy and Youth*
 17 *Smoking Reduction Act and shall not be counted in com-*
 18 *puting the annual amount of damages for purposes of that*
 19 *section.”.*

20 ***TITLE XIV—REVENUE AND***
 21 ***OTHER PROVISIONS***
 22 ***Subtitle A—Taxes on Tobacco***
 23 ***Products***

24 ***SEC. 1400. AMENDMENT OF 1986 CODE.***

25 ***Except as otherwise expressly provided,***
 26 ***whenever in this title an amendment or repeal***

1 *is expressed in terms of an amendment to, or*
 2 *repeal of, a section or other provision, the ref-*
 3 *erence shall be considered to be made to a sec-*
 4 *tion or other provision of the Internal Revenue*
 5 *Code of 1986.*

6 *SEC. 1401. TAXES ON TOBACCO PRODUCTS.*

7 *(a) CIGARETTES.—Subsection (b) of section*
 8 *5701 is amended—*

9 *(1) by striking “\$12 per thousand (\$10*
 10 *per thousand on cigarettes removed dur-*
 11 *ing 1991 or 1992);” in paragraph (1) and*
 12 *inserting “the applicable rate per thou-*
 13 *sand determined in accordance with the*
 14 *following table:*

<i>“In the case of cigarettes removed during:</i>	<i>The applicable rate is:</i>
<i>1999</i>	<i>\$37.00</i>
<i>2000</i>	<i>\$67.00</i>
<i>2001</i>	<i>\$92.00</i>
<i>2002 and thereafter</i>	<i>\$94.50.”;</i>

15 *and*

16 *(2) by striking paragraph (2) and in-*
 17 *serting the following:*

18 *“(2) LARGE CIGARETTES.—*

19 *“(A) IN GENERAL.—Except as pro-*
 20 *vided in subparagraph (B), on ciga-*
 21 *rettes, weighing more than 3 pounds*
 22 *per thousand, the applicable rate per*

1 *thousand determined in accordance*
 2 *with the following table:*

<i>"In the case of cigarettes removed during:</i>	<i>The applicable rate is:</i>
1999	\$77.70
2000	\$140.70
2001	\$193.20
2002 and thereafter	\$198.45.

3 **"(B) EXCEPTION.—On cigarettes**
 4 **more than 6½ inches in length, at the**
 5 **rate prescribed for cigarettes weigh-**
 6 **ing not more than 3 pounds per thou-**
 7 **sand, counting each 2¾ inches, or**
 8 **fraction thereof, of the length of each**
 9 **as one cigarette."**

10 **(b) CIGARS.—Subsection (a) of section 5701**
 11 **is amended—**

12 **(1) by striking "\$1.125 cents per thou-**
 13 **sand (93.75 cents per thousand on cigars**
 14 **removed during 1991 or 1992)," in para-**
 15 **graph (1) and inserting "the applicable**
 16 **rate per thousand determined in accord-**
 17 **ance with the following table:**

<i>"In the case of cigars removed during:</i>	<i>The applicable rate is:</i>
1999	\$3.4687 cents
2000	\$6.2822 cents
2001	\$8.6264 cents
2002 and thereafter	\$8.8588 cents.";

18 **and**

(2) *by striking paragraph (2) and inserting the following:*

“(2) LARGE CIGARS.—On cigars, weighing more than 3 pounds per thousand, the applicable percentage of the price for which sold but not more than the applicable rate per thousand determined in accordance with the following table:

<i>“In the case of cigars re- moved dur- ing:</i>	<i>The applicable percentage is:</i>	<i>The applicable rate is:</i>
<i>1999</i>	<i>39.312%</i>	<i>\$92.50</i>
<i>2000</i>	<i>71.189%</i>	<i>\$167.50</i>
<i>2001</i>	<i>97.753%</i>	<i>\$230.00</i>
<i>2002 and thereafter</i>	<i>100.407%</i>	<i>\$236.25.”</i>

(c) *CIGARETTE PAPERS.—Subsection (c) of section 5701 is amended to read as follows:*

“(c) CIGARETTE PAPERS.—

“(1) IN GENERAL.—Except as provided in paragraph (2), on each book or set of cigarette papers containing more than 25 papers, manufactured in or imported into the United States, there shall be imposed a tax of the applicable rate for each 50 papers or fractional part thereof as determined in accordance with the following table:

<i>"In the case of cigarette papers removed during:</i>	<i>The applicable rate is:</i>
1999	2.31 cents
2000	4.18 cents
2001	5.74 cents
2002 and thereafter	5.91 cents.

1 “(2) *EXCEPTION.—If cigarette papers*
2 *measure more than 6¹/₂ inches in length,*
3 *such cigarette papers shall be taxable at*
4 *the rate prescribed, counting each 2³/₄*
5 *inches, or fraction thereof, of the length of*
6 *each as one cigarette paper.”*

7 “(d) *CIGARETTE TUBES.—Subsection (d) of*
8 *section 5701 is amended to read as follows:*

9 “(d) *CIGARETTE TUBES.—*

10 “(1) *IN GENERAL.—Except as provided*
11 *in paragraph (2), on cigarette tubes, man-*
12 *ufactured in or imported into the United*
13 *States, there shall be imposed a tax of the*
14 *applicable rate for each 50 tubes or frac-*
15 *tional part thereof as determined in ac-*
16 *cordance with the following table:*

<i>"In the case of cigarette tubes removed during:</i>	<i>The applicable rate is:</i>
1999	4.62 cents
2000	8.39 cents
2001	11.53 cents
2002 and thereafter	11.82 cents.

17 “(2) *EXCEPTION.—If cigarette tubes*
18 *measure more than 6¹/₂ inches in length,*

1 *such cigarette tubes shall be taxable at*
 2 *the rate prescribed, counting each 2³/₄*
 3 *inches, or fraction thereof, of the length of*
 4 *each as one cigarette tube.”*

5 ***(e) SMOKELESS TOBACCO.—Paragraphs (1)***
 6 ***and (2) of subsection (e) of section 5701 are***
 7 ***amended to read as follows:***

8 ***“(1) SNUFF.—On snuff, the applicable***
 9 ***rate per pound determined in accordance***
 10 ***with the following table (and a propor-***
 11 ***tionate tax at the like rate on all frac-***
 12 ***tional parts of a pound):***

<i>“In the case of snuff removed during:</i>	<i>The applicable rate is:</i>
1999	\$1.11
2000	\$2.01
2001	\$2.76
2002 and thereafter	\$2.835
	<i>cents.</i>

13 ***“(2) CHEWING TOBACCO.—On chewing***
 14 ***tobacco, the applicable rate per pound de-***
 15 ***termined in accordance with the follow-***
 16 ***ing table (and a proportionate tax at the***
 17 ***like rate on all fractional parts of a***
 18 ***pound):***

<i>“In the case of chewing tobacco removed during:</i>	<i>The applicable rate is:</i>
1999	37 cents
2000	67 cents
2001	92 cents
2002 and thereafter	94.5 cents.”

1 ***(f) PIPE TOBACCO.—Subsection (f) of section***
 2 ***5701 is amended to read as follows:***

3 ***“(f) PIPE TOBACCO.—On pipe tobacco, man-***
 4 ***ufactured in or imported into the United***
 5 ***States, there shall be imposed a tax of the ap-***
 6 ***plicable rate per pound determined in accord-***
 7 ***ance with the following table (and a propor-***
 8 ***tionate tax at the like rate on all fractional***
 9 ***parts of a pound):***

<i>“In the case of pipe tobacco removed during:</i>	<i>The applicable rate is:</i>
<i>1999</i>	<i>\$2.0812 cents</i>
<i>2000</i>	<i>\$3.7705 cents</i>
<i>2001</i>	<i>\$5.1774 cents</i>
<i>2002 and thereafter</i>	<i>\$5.3157 cents.”</i>

10 ***(g) IMPOSITION OF EXCISE TAX ON MANUFAC-***
 11 ***TURE OR IMPORTATION OF ROLL-YOUR-OWN TO-***
 12 ***BACCO.—***

13 ***(1) IN GENERAL.—Section 5701 (relat-***
 14 ***ing to rate of tax) is amended by redesign-***
 15 ***ating subsection (g) as subsection (h)***
 16 ***and by inserting after subsection (f) the***
 17 ***following new subsection:***

18 ***“(g) ROLL-YOUR-OWN TOBACCO.—On roll-***
 19 ***your-own tobacco, manufactured in or im-***
 20 ***ported into the United States, there shall be***
 21 ***imposed a tax of the applicable rate per pound***
 22 ***determined in accordance with the following***

1 *table (and a proportionate tax at the like rate*
 2 *on all fractional parts of a pound):*

<i>"In the case of roll-your-own tobacco removed during:</i>	<i>The applicable rate is:</i>
1999	\$2.0812 cents
2000	\$3.7705 cents
2001	\$5.1774 cents
2002 and thereafter	\$5.3157 cents."

3 (2) *ROLL-YOUR-OWN TOBACCO.—Section*
 4 *5702 (relating to definitions) is amended*
 5 *by adding at the end the following new*
 6 *subsection:*

7 “(p) *ROLL-YOUR-OWN TOBACCO.—The term*
 8 *‘roll-your-own tobacco’ means any tobacco*
 9 *which, because of its appearance, type, pack-*
 10 *aging, or labeling, is suitable for use and like-*
 11 *ly to be offered to, or purchased by, consumers*
 12 *as tobacco for making cigarettes.”*

13 (3) *TECHNICAL AMENDMENTS.—*

14 (A) *Subsection (c) of section 5702*
 15 *is amended by striking “and pipe to-*
 16 *bacco” and inserting “pipe tobacco,*
 17 *and roll-your-own tobacco”.*

18 (B) *Subsection (d) of section 5702*
 19 *is amended—*

20 (i) *in the material preceding*
 21 *paragraph (1), by striking “or*
 22 *pipe tobacco” and inserting “pipe*

1 *tobacco, or roll-your-own tobacco*”,
 2 *and*

3 (ii) *by striking paragraph (1)*
 4 *and inserting the following new*
 5 *paragraph:*

6 “(1) *a person who produces cigars,*
 7 *cigarettes, smokeless tobacco, pipe to-*
 8 *bacco, or roll-your-own tobacco solely for*
 9 *the person’s own personal consumption or*
 10 *use, and”.*

11 (C) *The chapter heading for chap-*
 12 *ter 52 is amended to read as follows:*

13 **“CHAPTER 52—TOBACCO PRODUCTS AND**
 14 **CIGARETTE PAPERS AND TUBES”.**

15 (D) *The table of chapters for sub-*
 16 *title E is amended by striking the item*
 17 *relating to chapter 52 and inserting*
 18 *the following new item:*

 “CHAPTER 52. *Tobacco products and cigarette papers*
 and tubes.”

19 (h) **INFLATION ADJUSTMENT OF RATES,**
 20 **FLOOR STOCKS TAXES, AND APPLICATION OF**
 21 **TAXES TO POSSESSIONS.—Section 5701, as**
 22 *amended by subsection (g), is amended by re-*
 23 *designating subsection (h) as subsection (j)*

1 *and by inserting after subsection (g) the fol-*
2 *lowing:*

3 *“(h) INFLATION ADJUSTMENT.—*

4 *“(1) IN GENERAL.—In the case of any*
5 *calendar year after 2001, the dollar*
6 *amount contained in the table in each of*
7 *the preceding subsections (and the per-*
8 *centage contained in the table contained*
9 *in subsection (b)(2)) otherwise applicable*
10 *to such calendar year shall be increased*
11 *by an amount equal to—*

12 *“(A) such dollar amount (or per-*
13 *centage), multiplied by*

14 *“(B) the cost-of-living adjustment*
15 *determined under section 1(f)(3) for*
16 *such calendar year by substituting*
17 *‘calendar year 2000’ for ‘calendar year*
18 *1992’ in subparagraph (B) thereof.*

19 *“(2) ROUNDING.—If any increase deter-*
20 *mined under paragraph (1) is not a mul-*
21 *tiple of—*

22 *“(A) in the case of a dollar*
23 *amount in the table contained in sub-*
24 *section (a)(2) or (b), 50 cents, and*

1 “(B) *in the case of a dollar*
2 *amount in the table contained in sub-*
3 *section (a)(1), (e), (f), or (g), 1 cent,*

4 “(C) *in the case of a dollar*
5 *amount in the table contained in sub-*
6 *section (c) or (d), .01 cent,*

7 *such increase shall be rounded to the*
8 *nearest multiple of the applicable cent*
9 *unit.*

10 “(i) *FLOOR STOCKS TAXES.—*

11 “(1) *IMPOSITION OF TAX.—On tobacco*
12 *products manufactured in or imported*
13 *into the United States or any possession of*
14 *the United States which are removed be-*
15 *fore any tax increase date, and held on*
16 *such date for sale by any person, there is*
17 *hereby imposed a tax in an amount equal*
18 *to the excess of—*

19 “(A) *the tax which would be im-*
20 *posed under any preceding subsection*
21 *of this section on the article if the ar-*
22 *ticle had been removed on such date,*
23 *over*

24 “(B) *the prior tax (if any) imposed*
25 *under such subsection on such article.*

1 ***“(2) CREDIT AGAINST TAX.—Each person***
2 ***shall be allowed as a credit against the***
3 ***taxes imposed by paragraph (1) an***
4 ***amount equal to \$500. Such credit shall***
5 ***not exceed the amount of taxes imposed by***
6 ***paragraph (1) on any tax increase date,***
7 ***for which such person is liable.***

8 ***“(3) LIABILITY FOR TAX AND METHOD OF***
9 ***PAYMENT.—***

10 ***“(A) LIABILITY FOR TAX.—A person***
11 ***holding cigarettes on any tax increase***
12 ***date, to which any tax imposed by***
13 ***paragraph (1) applies shall be liable***
14 ***for such tax.***

15 ***“(B) METHOD OF PAYMENT.—The tax***
16 ***imposed by paragraph (1) shall be***
17 ***paid in such manner as the Secretary***
18 ***shall prescribe by regulations.***

19 ***“(C) TIME FOR PAYMENT.—The tax***
20 ***imposed by paragraph (1) shall be***
21 ***paid on or before the date which is***
22 ***180 days after any tax increase date.***

23 ***“(4) ARTICLES IN FOREIGN TRADE***
24 ***ZONES.—Notwithstanding the Act of June***
25 ***18, 1934 (48 Stat. 998, 19 U.S.C. 81a) and***

1 *any other provision of law, any article*
2 *which is located in a foreign trade zone*
3 *on any tax increase date, shall be subject*
4 *to the tax imposed by paragraph (1) if—*

5 *“(A) internal revenue taxes have*
6 *been determined, or customs duties*
7 *liquidated, with respect to such arti-*
8 *cle before such date pursuant to a re-*
9 *quest made under the 1st proviso of*
10 *section 3(a) of such Act, or*

11 *“(B) such article is held on such*
12 *date under the supervision of a cus-*
13 *toms officer pursuant to the 2d pro-*
14 *viso of such section 3(a).*

15 *“(5) TAX INCREASE DATE.—The term*
16 *“tax increase date” means January 1 in*
17 *any calendar year after 1998.*

18 *“(6) CONTROLLED GROUPS.—Rules simi-*
19 *lar to the rules of section 5061(e)(3) shall*
20 *apply for purposes of this subsection.*

21 *“(7) OTHER LAWS APPLICABLE.—All pro-*
22 *visions of law, including penalties, appli-*
23 *cable with respect to the taxes imposed by*
24 *the preceding subsections of this section*
25 *shall, insofar as applicable and not in-*

1 *consistent with the provisions of this sub-*
 2 *section, apply to the floor stocks taxes im-*
 3 *posed by paragraph (1), to the same extent*
 4 *as if such taxes were imposed by such sub-*
 5 *sections. The Secretary may treat any per-*
 6 *son who bore the ultimate burden of the*
 7 *tax imposed by paragraph (1) as the per-*
 8 *son to whom a credit or refund under*
 9 *such provisions may be allowed or made.*

10 “(j) *APPLICATION OF TAXES TO U.S. POSSES-*
 11 *SIONS.—Notwithstanding subsections (b) and*
 12 *(c) of section 7653 and any other provision of*
 13 *law—*

14 “(1) *IN GENERAL.—On tobacco products*
 15 *manufactured in or imported into any*
 16 *possession of the United States, there is*
 17 *hereby imposed a tax at the rate equal to*
 18 *the excess of—*

19 “(A) *the rate of tax applicable*
 20 *under this section to like articles*
 21 *manufactured in the United States,*
 22 *over*

23 “(B) *the rate referred to in sub-*
 24 *paragraph (A) which would have been*
 25 *in effect if the amendments made by*

1 *the National Tobacco Policy and*
2 *Youth Smoking Reduction Act had not*
3 *been enacted.*

4 “(2) *SHIPMENTS TO U.S. POSSESSIONS*
5 *FROM THE UNITED STATES.—Only the rates*
6 *of tax which would have been in effect if*
7 *the amendments made by the National To-*
8 *bacco Policy and Youth Smoking Reduc-*
9 *tion Act had not been enacted shall be*
10 *taken into account in determining the*
11 *amount of any exemption from, or credit*
12 *or drawback of, any tax imposed by this*
13 *section on any article shipped to any pos-*
14 *session of the United States from the*
15 *United States.*

16 “(3) *SHIPMENTS FROM U.S. POSSESSIONS*
17 *TO THE UNITED STATES.—The rates of tax*
18 *taken into account under section 7652(a)*
19 *with respect to tobacco products coming*
20 *into the United States from any possession*
21 *of the United States shall be the rates of*
22 *tax which would have been in effect if the*
23 *amendments made by the National To-*
24 *bacco Policy and Youth Smoking Reduc-*
25 *tion Act had not been enacted.*

1 **“(4) DISPOSITION OF REVENUES.—The**
 2 **provisions of section 7652(a)(3) shall not**
 3 **apply to any tax imposed by reason of this**
 4 **subsection.”**

5 **(j) MODIFICATIONS OF CERTAIN TOBACCO TAX**
 6 **PROVISIONS.—**

7 **(1) EXEMPTION FOR EXPORTED TOBACCO**
 8 **PRODUCTS AND CIGARETTE PAPERS AND**
 9 **TUBES TO APPLY ONLY TO ARTICLES MARKED**
 10 **FOR EXPORT.—**

11 **(A) Subsection (b) of section 5704**
 12 **is amended by adding at the end the**
 13 **following new sentence: “Tobacco**
 14 **products and cigarette papers and**
 15 **tubes may not be transferred or re-**
 16 **moved under this subsection unless**
 17 **such products or papers and tubes**
 18 **bear such marks, labels, or notices as**
 19 **the Secretary shall by regulations pre-**
 20 **scribe.”**

21 **(B) Section 5761 is amended by re-**
 22 **designating subsections (c) and (d) as**
 23 **subsections (d) and (e), respectively,**
 24 **and by inserting after subsection (b)**
 25 **the following new subsection:**

1 “(c) **SALE OF TOBACCO PRODUCTS AND CIGA-**
2 **RETTE PAPERS AND TUBES FOR EXPORT.—Except**
3 **as provided in subsections (b) and (d) of sec-**
4 **tion 5704—**

5 “(1) *every person who sells, relands, or*
6 *receives within the jurisdiction of the*
7 *United States any tobacco products or cig-*
8 *arette papers or tubes which have been la-*
9 *beled or shipped for exportation under*
10 *this chapter,*

11 “(2) *every person who sells or receives*
12 *such relanded tobacco products or cig-*
13 *arette papers or tubes, and*

14 “(3) *every person who aids or abets in*
15 *such selling, relanding, or receiving,*

16 *shall, in addition to the tax and any other pen-*
17 *alty provided in this title, be liable for a pen-*
18 *alty equal to the greater of \$1,000 or 5 times*
19 *the amount of the tax imposed by this chapter.*

20 *All tobacco products and cigarette papers and*
21 *tubes relanded within the jurisdiction of the*
22 *United States, and all vessels, vehicles, and*
23 *aircraft used in such relanding or in removing*
24 *such products, papers, and tubes from the*

1 *place where relanded, shall be forfeited to the*
2 *United States.”*

3 *(C) Subsection (a) of section 5761*
4 *is amended by striking “subsection*
5 *(b)” and inserting “subsection (b) or*
6 *(c)”.*

7 *(D) Subsection (d) of section 5761,*
8 *as redesignated by subparagraph (B),*
9 *is amended by striking “The penalty*
10 *imposed by subsection (b)” and insert-*
11 *ing “The penalties imposed by sub-*
12 *sections (b) and (c)”.*

13 *(E)(i) Subpart F of chapter 52 is*
14 *amended by adding at the end the fol-*
15 *lowing new section:*

16 *“SEC. 5754. RESTRICTION ON IMPORTATION OF PRE-*
17 *VIOUSLY EXPORTED TOBACCO PRODUCTS.*

18 *“(a) IN GENERAL.—Tobacco products and*
19 *cigarette papers and tubes previously exported*
20 *from the United States may be imported or*
21 *brought into the United States only as pro-*
22 *vided in section 5704(d). For purposes of this*
23 *section, section 5704(d), section 5761, and such*
24 *other provisions as the Secretary may specify*
25 *by regulations, references to exportation shall*

1 *be treated as including a reference to ship-*
 2 *ment to the Commonwealth of Puerto Rico.*

3 **“(b) CROSS REFERENCE.—**

*“For penalty for the sale of tobacco products and
 cigarette papers and tubes in the United States
 which are labeled for export, see section 5761(c).”*

4 **(ii) *The table of sections for sub-***
 5 ***part F of chapter 52 is amended by***
 6 ***adding at the end the following new***
 7 ***item:***

*“Sec. 5754. Restriction on importation of previously
 exported tobacco products.”*

8 **(2) IMPORTERS REQUIRED TO BE QUALI-**
 9 ***FIED.—***

10 **(A) *Sections 5712, 5713(a), 5721,***
 11 ***5722, 5762(a)(1), and 5763 (b) and (c)***
 12 ***are each amended by inserting “or im-***
 13 ***porter” after “manufacturer”.***

14 **(B) *The heading of subsection (b)***
 15 ***of section 5763 is amended by insert-***
 16 ***ing “QUALIFIED IMPORTERS,” after***
 17 ***“MANUFACTURERS,”.***

18 **(C) *The heading for subchapter B***
 19 ***of chapter 52 is amended by inserting***
 20 ***“and Importers” after “Manufactur-***
 21 ***ers”.***

1 ***(D) The item relating to sub-***
2 ***chapter B in the table of subchapters***
3 ***for chapter 52 is amended by inserting***
4 ***“and importers” after “manufactur-***
5 ***ers”.***

6 ***(3) BOOKS OF 25 OR FEWER CIGARETTE***
7 ***PAPERS SUBJECT TO TAX.—Subsection (c) of***
8 ***section 5701 is amended by striking “On***
9 ***each book or set of cigarette papers con-***
10 ***taining more than 25 papers,” and insert-***
11 ***ing “On cigarette papers,”.***

12 ***(4) STORAGE OF TOBACCO PRODUCTS.—***
13 ***Subsection (k) of section 5702 is amended***
14 ***by inserting “under section 5704” after***
15 ***“internal revenue bond”.***

16 ***(5) AUTHORITY TO PRESCRIBE MINIMUM***
17 ***MANUFACTURING ACTIVITY REQUIREMENTS.—***
18 ***Section 5712 is amended by striking “or”***
19 ***at the end of paragraph (1), by redesign-***
20 ***ating paragraph (2) as paragraph (3),***
21 ***and by inserting after paragraph (1) the***
22 ***following new paragraph:***

23 ***“(2) the activity proposed to be carried***
24 ***out at such premises does not meet such***

1 *minimum capacity or activity require-*
 2 *ments as the Secretary may prescribe, or”.*

3 ***(k) REPEAL OF DUPLICATIVE PROVISIONS.—***
 4 *Section 9302 of the Balanced Budget Act of*
 5 *1997 (other than subsection (i)(2)) and the*
 6 *amendments made by such section are re-*
 7 *pealed, and the Internal Revenue Code of 1986*
 8 *shall be administered as if such section and*
 9 *such amendments had not been enacted.*

10 ***(l) EFFECTIVE DATE.—****The amendments and*
 11 *repeal made by this section shall apply to arti-*
 12 *cles removed (as defined in section 5702(k) of*
 13 *the Internal Revenue Code of 1986, as amend-*
 14 *ed by this section) after December 30, 1998.*

15 ***SEC. 1402. EXCISE TAX ON FAILURE TO MEET UNDERAGE***
 16 ***SMOKING REDUCTION GOALS.***

17 ***(a) IN GENERAL.—****Subchapter G of chapter*
 18 *52 (relating to penalties and forfeitures) is*
 19 *amended by adding at the end the following*
 20 *new part:*

21 ***“PART II—FAILURE TO MEET UNDERAGE***
 22 ***SMOKING REDUCTION GOALS***

“Sec. 5771. Excise tax on failure to meet underage smoking
 reduction goals.

1 **“SEC. 5771. EXCISE TAX ON FAILURE TO MEET UNDERAGE**
2 **SMOKING REDUCTION GOALS.**

3 **“(a) IMPOSITION OF TAX.—If the Secretary**
4 **determines under subsection (f) for any cal-**
5 **endar year that there is a failure to attain the**
6 **required percentage reduction in underage**
7 **use of cigarettes or smokeless tobacco, then**
8 **there is hereby imposed on each applicable**
9 **person with respect to such product a tax in**
10 **the amount determined under subsection (b).**

11 **“(b) AMOUNT OF TAX.—The amount of the**
12 **tax imposed by subsection (a) on any applica-**
13 **ble person with respect to cigarettes or smoke-**
14 **less tobacco for any calendar year shall be an**
15 **amount equal to such person’s applicable per-**
16 **centage of the non-attainment penalty for such**
17 **product for such calendar year.**

18 **“(c) LIABILITY FOR AND PAYMENT OF TAX.—**

19 **“(1) LIABILITY.—**

20 **“(A) IN GENERAL.—Each applicable**
21 **person shall be liable for the tax im-**
22 **posed under subsection (a) on such**
23 **person.**

24 **“(B) JOINT, SEVERAL, AND STRICT LI-**
25 **ABILITY.—**

1 “(i) **CIGARETTES.**—Any tax im-
 2 posed by subsection (a) on any ap-
 3 plicable person with respect to
 4 cigarettes shall be the joint, sev-
 5 eral, and strict liability of all ap-
 6 plicable persons with respect to
 7 cigarettes.

8 “(ii) **SMOKELESS TOBACCO.**—Any
 9 tax imposed by subsection (a) on
 10 any applicable person with re-
 11 spect to smokeless tobacco shall be
 12 the joint, several, and strict liabil-
 13 ity of all applicable persons with
 14 respect to smokeless tobacco.

15 The Secretary shall make a reason-
 16 able effort to collect any tax under
 17 this section on the person on which
 18 the tax was imposed (without regard
 19 to this subparagraph).

20 “(2) **TIME FOR PAYMENT.**—Any tax im-
 21 posed by subsection (a) for any calendar
 22 year shall be due and payable on April 1
 23 of the following calendar year.

24 “(d) **APPLICABLE PERSON; APPLICABLE PER-**
 25 **CENTAGE.**—For purposes of this section—

1 “(1) *APPLICABLE PERSON.*—*The term*
 2 *‘applicable person’ means, with respect to*
 3 *any calendar year, any person liable for*
 4 *tax imposed by section 5201 with respect*
 5 *to cigarettes or smokeless tobacco.*

6 “(2) *APPLICABLE PERCENTAGE.*—*The*
 7 *term ‘applicable percentage’ means, with*
 8 *respect to any product of an applicable*
 9 *person for a calendar year, the percentage*
 10 *(determined by the Secretary) equal to the*
 11 *ratio of—*

12 “(A) *the liability of the person for*
 13 *the taxes imposed by section 5701 on*
 14 *such product for the calendar year, to*

15 “(B) *such liability for all applica-*
 16 *ble persons with respect to such prod-*
 17 *uct for the calendar year.*

18 “(3) *LIABILITY FOR TAX.*—*For purposes*
 19 *of this subsection, liability for tax im-*
 20 *posed by section 5701 shall be determined*
 21 *without regard to section 5703 and net of*
 22 *any credit or refund before the determina-*
 23 *tion date.*

24 “(e) *CALCULATION OF NON-ATTAINMENT PEN-*
 25 *ALTIES.*—

1 **“(1) SECRETARY TO DETERMINE NON-AT-**
 2 **TAINMENT PENALTY.—Not later than Feb-**
 3 **ruary 15 of each calendar year, the Sec-**
 4 **retary shall determine and publish—**

5 **“(A) the non-attainment penalty**
 6 **(if any) for cigarettes and for smoke-**
 7 **less tobacco for the preceding cal-**
 8 **endar year, and**

9 **“(B) the applicable percentage for**
 10 **such preceding calendar year for each**
 11 **applicable person.**

12 **“(2) NON-ATTAINMENT PENALTY FOR**
 13 **CIGARETTES.—The non-attainment penalty**
 14 **for cigarettes for any calendar year for**
 15 **which a failure is determined under sub-**
 16 **section (f) shall be determined as follows:**

<i>If the non-attainment percentage is:</i>	<i>The penalty is:</i>
<i>Not more than 5 percent</i>	<i>\$80,000,000 multiplied by the non-attainment percentage</i>
<i>More than 5% but not more than 10%</i>	<i>\$400,000,000, plus \$160,000,000 multiplied by the non-attainment percentage in excess of 5% but not in excess of 10%</i>
<i>More than 10% but not more than 20%</i>	<i>\$1,200,000,000, plus \$240,000,000 multiplied by the non-attainment percentage in excess of 10% but not in excess of 20%</i>
<i>More than 20%</i>	<i>\$3,600,000,000</i>

1 **“(3) NON-ATTAINMENT PENALTY FOR**
 2 **SMOKELESS TOBACCO.—***The non-attainment*
 3 *penalty for smokeless tobacco for any cal-*
 4 *endar year for which a failure is deter-*
 5 *mined under subsection (f) shall be deter-*
 6 *mined as follows:*

<i>If the non-attainment percentage is:</i>	<i>The penalty is:</i>
<i>Not more than 5 percent</i>	<i>\$8,000,000 multiplied by the non-attainment percentage</i>
<i>More than 5% but not more than 10%</i>	<i>\$40,000,000, plus \$16,000,000 multiplied by the non-attainment percentage in excess of 5% but not in excess of 10%</i>
<i>More than 10% but not more than 20%</i>	<i>\$120,000,000, plus \$24,000,000 multiplied by the non-attainment percentage in excess of 10% but not in excess of 20%</i>
<i>More than 20%</i>	<i>\$360,000,000</i>

7 **“(4) PENALTIES TO BE ADJUSTED FOR IN-**
 8 **FLATION.—**

9 **“(A) IN GENERAL.—***Beginning with*
 10 *the fourth calendar year beginning*
 11 *after the date of enactment of this sec-*
 12 *tion, each dollar amount in the tables*
 13 *in paragraphs (2) and (3) shall be in-*
 14 *creased by the inflation adjustment.*

15 **“(B) INFLATION ADJUSTMENT.—***For*
 16 *purposes of subparagraph (A), the in-*

1 *flation adjustment for any calendar*
2 *year is the percentage (if any) by*
3 *which—*

4 *“(i) the CPI for the preceding*
5 *calendar year, exceeds*

6 *“(ii) the CPI for the calendar*
7 *year 1998.*

8 *“(C) CPI.—For purposes of sub-*
9 *paragraph (B), the CPI for any cal-*
10 *endar year is the average of the Con-*
11 *sumer Price Index for all-urban con-*
12 *sumers published by the Department*
13 *of Labor as of the close of the 12-*
14 *month period ending August 31 of*
15 *such calendar year.*

16 *“(D) ROUNDING.—If any increase*
17 *determined under subparagraph (A)*
18 *is not a multiple of \$1,000, the in-*
19 *crease shall be rounded to the nearest*
20 *multiple of \$1,000.*

21 *“(f) FAILURES TO WHICH SECTION APPLIES.—*
22 *For purposes of this section—*

23 *“(1) REQUIRED REDUCTION.—*

24 *“(A) REQUIRED REDUCTIONS FOR*
25 *CIGARETTES.—With respect to ciga-*

1 *rettes, the required percentage reduc-*
 2 *tion in underage use means—*

<i>Calendar Year</i>	<i>Required Percentage Reduction as a Per- centage of Base Incidence Percentage in Un- derage Cigarette Use</i>
<i>2001 and 2002</i>	<i>15 percent</i>
<i>2003 and 2004</i>	<i>30 percent</i>
<i>2005, 2006, and 2007</i>	<i>50 percent</i>
<i>2008 and there- after</i>	<i>60 percent</i>

3 **“(B) REQUIRED REDUCTIONS FOR**
 4 **SMOKELESS TOBACCO.—***With respect to*
 5 *smokeless tobacco products, the re-*
 6 *quired percentage reduction in under-*
 7 *age use means—*

<i>Calendar Year</i>	<i>Required Percentage Reduction as a Percentage of Base Incidence Percentage in Underage Smokeless Tobacco Use</i>
<i>2001 and 2002</i>	<i>12.5 percent</i>
<i>2003 and 2004</i>	<i>25 percent</i>
<i>2005, 2006, and 2007</i>	<i>35 percent</i>
<i>2008 and thereafter</i>	<i>45 percent</i>

1 “(2) **DETERMINATION OF UNDERAGE**
2 **USE.**—As soon as practicable after cal-
3 endar year 2001, and annually thereafter,
4 the Secretary shall determine the percent
5 incidence of underage use of cigarettes
6 and of smokeless tobacco by calculating
7 the average, weighted by relative popu-
8 lation of such age groups in 1995 as deter-
9 mined by the Bureau of the Census, of the
10 percentages of individuals in grade 12
11 (ages 16 and 17), in grade 10 (ages 14 and
12 15), and in grade 8 (age 13) who used
13 cigarettes or smokeless tobacco, as appro-
14 priate, on a daily basis during the preced-
15 ing calendar year. The percentages used
16 in this calculation are to be those meas-
17 ured by (A) the University of Michigan
18 Survey, or (B) such other index as is cho-
19 sen by the Secretary after consultation
20 with the Secretary of Health and Human

1 *Services and after notice and the oppor-*
2 *tunity for comment in accordance with*
3 *section 553 of title 5, United States Code.*

4 **“(3) BASE INCIDENCE PERCENTAGE.—***The*
5 *term ‘base incidence percentage’ means—*

6 **“(A) in the case of cigarettes, the**
7 *average, weighted by relative popu-*
8 *lation of the following age groups in*
9 *1995 as determined by the Bureau of*
10 *the Census, of (i) the average of the*
11 *percentages of individuals in grade 12*
12 *(ages 16 and 17) from 1986 to 1996*
13 *who used cigarettes on a daily basis;*
14 *(ii) the average of the percentages of*
15 *individuals in grade 10 (ages 14 and*
16 *15) from 1991 to 1996 who used ciga-*
17 *rettes on a daily basis; and (iii) the*
18 *average of the percentages of individ-*
19 *uals in grade 8 (age 13) from 1991 to*
20 *1996 who used cigarettes on a daily*
21 *basis; and*

22 **“(B) in the case of smokeless to-**
23 *bacco products, the average, weighted*
24 *by relative population of the following*
25 *age groups in 1995 as determined by*

1 *the Bureau of the Census, of the per-*
 2 *centage of individuals in grade 12*
 3 *(ages 16 and 17), individuals in grade*
 4 *10 (ages 14 and 15), and individuals*
 5 *in grade 8 (age 13) who used smoke-*
 6 *less tobacco products on a daily basis*
 7 *in 1996.*

8 *The percentages specified in this para-*
 9 *graph are those measured by using an*
 10 *index similar to the index used for pur-*
 11 *poses of paragraph (2).*

12 *“(4) NON-ATTAINMENT PERCENTAGE FOR*
 13 *CIGARETTES.—The term ‘non-attainment*
 14 *percentage for cigarettes’ means the num-*
 15 *ber of percentage points yielded—*

16 *“(A) for a calendar year in which*
 17 *the percent incidence of underage use*
 18 *of cigarettes is less than the base inci-*
 19 *dence percentage for such use, by sub-*
 20 *tracting—*

21 *“(i) the percentage by which*
 22 *the percent incidence of underage*
 23 *use of cigarettes in that year is*
 24 *less than the base incidence per-*
 25 *centage, from*

1 “(ii) *the required percentage*
 2 *reduction applicable in that year;*
 3 *and*

4 “(B) *for a calendar year in which*
 5 *the percent incidence of underage use*
 6 *of cigarettes is greater than the base*
 7 *incidence percentage for such use, by*
 8 *adding—*

9 “(i) *the percentage by which*
 10 *the percent incidence of underage*
 11 *use of cigarettes in that year is*
 12 *greater than the base incidence*
 13 *percentage; and*

14 “(ii) *the required percentage*
 15 *reduction applicable in that year.*

16 “(5) *NON-ATTAINMENT PERCENTAGE FOR*
 17 *SMOKELESS TOBACCO PRODUCTS.—The term*
 18 *‘non-attainment percentage for smokeless*
 19 *tobacco products’ means the number of*
 20 *percentage points yielded—*

21 “(A) *for a calendar year in which*
 22 *the percent incidence of underage use*
 23 *of smokeless tobacco products is less*
 24 *than the base incidence percentage*
 25 *for such use, by subtracting—*

1 “(i) *the percentage by which*
 2 *the percent incidence of underage*
 3 *use of smokeless tobacco products*
 4 *in that year is less than the base*
 5 *incidence percentage, from*

6 “(ii) *the required percentage*
 7 *reduction applicable in that year;*
 8 *and*

9 “(B) *for a calendar year in which*
 10 *the percent incidence of underage use*
 11 *of smokeless tobacco products is great-*
 12 *er than the base incidence percentage*
 13 *for such use, by adding—*

14 “(i) *the percentage by which*
 15 *the percent incidence of underage*
 16 *use of smokeless tobacco products*
 17 *in that year is greater than the*
 18 *base incidence percentage; and*

19 “(ii) *the required percentage*
 20 *reduction applicable in that year.*

21 “(g) *PENALTY LIABILITY AMONG MANUFAC-*
 22 *TURERS.—*

23 “(1) *IN GENERAL.—The District Courts*
 24 *of the United States shall have jurisdic-*
 25 *tion to adjudicate any claim brought*

1 *under this section by an applicable person*
2 *against one or more other applicable per-*
3 *sons—*

4 *“(A) to recover a portion of the*
5 *penalty paid by the plaintiff applica-*
6 *ble person; or*

7 *“(B) for a reallocation of the pen-*
8 *alty among applicable persons.*

9 **“(2) CONTRIBUTION OR REIMBURSEMENT**
10 **LIABILITY.—***An applicable person shall be*
11 *liable under this subsection to one or*
12 *more other applicable persons if the*
13 *plaintiff establishes by a preponderance*
14 *of the evidence that the defendant,*
15 *through its acts or omissions, was respon-*
16 *sible for a disproportionate share of the*
17 *non-attainment penalty as compared to*
18 *the responsibility of the plaintiff.*

19 **“(3) RESPONSIBILITY FOR AGENTS, ETC.—**
20 *In any action brought under this sub-*
21 *section, an applicable person shall be*
22 *held responsible for any act or omission of*
23 *its attorneys, advertising agencies, or*
24 *other agents that contributed to that per-*

1 *son's responsibility for the penalty as-*
 2 *essed under this section."*

3 **(b) TAX NOT DEDUCTIBLE.—Section 275(a)**
 4 *is amended by adding after paragraph (6) the*
 5 *following new paragraph:*

6 **"(7) The tax imposed by section 5771."**

7 **(c) CONFORMING AMENDMENTS.—So much of**
 8 *subchapter G of chapter 52 as precedes section*
 9 *5761 as amended reads as follows:*

"Subchapter G—Penalties and Forfeitures

"Part I—General provisions.

"Part II—Failure to meet underage smoking reduc-
 tion goals.

10 **"PART I—GENERAL PROVISIONS".**

11 **SEC. 1403. ESTABLISHMENT OF TRUST FUND.**

12 **(a) IN GENERAL.—Subchapter A of chapter**
 13 *98 (relating to establishment of trust funds) is*
 14 *amended by adding at the end the following*
 15 *new section:*

16 **"SEC. 9512. NATIONAL TOBACCO SETTLEMENT TRUST**
 17 **FUND.**

18 **"(a) CREATION OF TRUST FUND.—There is**
 19 *established in the Treasury of the United*
 20 *States a trust fund to be known as the 'Na-*
 21 *tional Tobacco Settlement Trust Fund', con-*
 22 *sisting of such amounts as may be appro-*
 23 *priated or credited to the National Tobacco*

1 *Settlement Trust Fund as provided in this sec-*
2 *tion.*

3 “(b) *TRANSFERS TO NATIONAL TOBACCO SET-*
4 *TLEMENT TRUST FUND.—*

5 “(1) *IN GENERAL.—There are appro-*
6 *priated to the National Tobacco Settle-*
7 *ment Trust Fund—*

8 “(A) *amounts equivalent to the net*
9 *revenues received in the Treasury*
10 *after December 31, 1998, from the*
11 *taxes imposed by section 5701 to the*
12 *extent attributable to increases in the*
13 *rates of tax imposed by such section*
14 *over the rates which would have been*
15 *imposed if the National Tobacco Pol-*
16 *icy and Youth Smoking Reduction Act*
17 *had not been enacted,*

18 “(B) *amounts equivalent to the net*
19 *revenues received in the Treasury*
20 *after December 31, 1998, from the tax*
21 *imposed by section 5771, and*

22 “(C) *amounts determined by the*
23 *Secretary to be equivalent to the*
24 *amounts of civil penalties collected*
25 *under the provisions of, and amend-*

1 *ments made by, the National Tobacco*
 2 *Policy and Youth Smoking Reduction*
 3 *Act.*

4 “(2) *NET REVENUES.*—*The term ‘net rev-*
 5 *enues’ means the amount estimated by the*
 6 *Secretary based on the excess of—*

7 “(A) *the taxes received in the*
 8 *Treasury as described in subpara-*
 9 *graphs (A) and (B) of paragraph (1),*
 10 *over*

11 “(B) *the decrease in the tax im-*
 12 *posed by chapter 1 resulting from the*
 13 *imposition of the taxes described in*
 14 *subparagraph (A).*

15 “(c) *EXPENDITURES FROM TRUST FUND.*—

16 “(1) *IN GENERAL.*—*Except as provided*
 17 *in this subsection and subsection (d),*
 18 *amounts in the National Tobacco Settle-*
 19 *ment Trust Fund shall be available, as*
 20 *provided by appropriations Acts, for mak-*
 21 *ing expenditures after December 31, 1998,*
 22 *under the provisions of, and the amend-*
 23 *ments made by, the National Tobacco Pol-*
 24 *icy and Youth Smoking Reduction Act, as*

1 *in effect on the date of the enactment of*
2 *this section.*

3 “(2) *ECONOMIC ASSISTANCE TO FARM-*
4 *ERS.—*

5 “(A) *IN GENERAL.—Amounts in the*
6 *National Tobacco Settlement Trust*
7 *Fund shall be available, without fur-*
8 *ther appropriations, for the purposes*
9 *set forth in sections 1021, 1022, 1023,*
10 *and 1031 of the National Tobacco Pol-*
11 *icy and Youth Smoking Reduction Act,*
12 *and subpart 9 of part A of title IV of*
13 *the Higher Education Act of 1965 (re-*
14 *lating to long-term economic assist-*
15 *ance to farmers), as in effect on the*
16 *date of the enactment of this Act.*

17 “(B) *BUDGETARY TREATMENT.—This*
18 *paragraph constitutes budget author-*
19 *ity in advance of appropriations Acts*
20 *and represents the obligation of the*
21 *Federal Government to provide pay-*
22 *ments to States and eligible persons in*
23 *accordance with the provisions de-*
24 *scribed in subparagraph (A).*

1 **“(3) TAX REFUNDS.—The Secretary**
2 **shall pay from time to time from the Na-**
3 **tional Tobacco Settlement Trust Fund**
4 **into the general fund of the Treasury**
5 **amounts equivalent to refunds provided**
6 **under subchapter A of chapter 52 to the**
7 **extent such refunds are attributable to the**
8 **revenues transferred to such Trust Fund**
9 **under this section.**

10 **“(d) STATE LITIGATION SETTLEMENT AC-**
11 **COUNT.—**

12 **“(1) IN GENERAL.—There is established**
13 **in the National Tobacco Settlement Trust**
14 **Fund a separate account to be known as**
15 **the ‘State Litigation Settlement Account’,**
16 **consisting of such amounts as may be**
17 **transferred to such Account under para-**
18 **graph (2).**

19 **“(2) TRANSFERS TO ACCOUNT.—The Sec-**
20 **retary of the Treasury shall transfer to**
21 **the State Litigation Settlement Account**
22 **an amount equal to 45 percent (30 percent**
23 **in the case of calendar years 1999, 2000,**
24 **2001, 2002, and 2003) of the amounts ap-**

propriated to the National Tobacco Settlement Trust Fund under subsection (b).

“(3) EXPENDITURES FROM ACCOUNT.—

“(A) IN GENERAL.—Except as provided in paragraph (5), amounts in the State Litigation Settlement Account shall be available, without further appropriations, to make payments to each State in the amount determined under subparagraph (B). The Secretary shall transfer amounts available under this subsection to each State as amounts are credited to the State Litigation Settlement Account without undue delay.

“(B) AMOUNT.—Except as provided in paragraph (4), the amount of any payment to a State under subparagraph (A) for any calendar year shall be equal to the percentage of the amounts transferred to the State Litigation Settlement Account for such calendar year determined in accordance with the following table:

<i>“States:</i>	<i>Percentage:</i>
<i>Alabama</i>	<i>1.237</i>
<i>Alaska</i>	<i>0.400</i>

<i>Arizona</i>	1.709
<i>Arkansas</i>	0.954
<i>California</i>	8.695
<i>Colorado</i>	0.990
<i>Connecticut</i>	1.548
<i>Delaware</i>	0.400
<i>District of Columbia</i>	0.474
<i>Florida</i>	4.768
<i>Georgia</i>	2.735
<i>Hawaii</i>	0.800
<i>Idaho</i>	0.400
<i>Illinois</i>	3.930
<i>Indiana</i>	1.490
<i>Iowa</i>	0.932
<i>Kansas</i>	0.800
<i>Kentucky</i>	1.664
<i>Louisiana</i>	1.723
<i>Maine</i>	0.800
<i>Maryland</i>	1.425
<i>Massachusetts</i>	3.802
<i>Michigan</i>	3.586
<i>Minnesota</i>	1.246
<i>Mississippi</i>	1.701
<i>Missouri</i>	1.701
<i>Montana</i>	0.400
<i>Nebraska</i>	0.400
<i>Nevada</i>	0.400
<i>New Hampshire</i>	0.400
<i>New Jersey</i>	3.755
<i>New Mexico</i>	0.800
<i>New York</i>	12.812
<i>North Carolina</i>	1.977
<i>North Dakota</i>	0.400
<i>Ohio</i>	4.205
<i>Oklahoma</i>	0.800
<i>Oregon</i>	1.353
<i>Pennsylvania</i>	4.421
<i>Rhode Island</i>	0.800
<i>South Carolina</i>	1.090
<i>South Dakota</i>	0.400
<i>Tennessee</i>	2.851
<i>Texas</i>	5.930
<i>Utah</i>	0.400
<i>Vermont</i>	0.400
<i>Virginia</i>	1.348
<i>Washington</i>	1.726
<i>West Virginia</i>	0.782
<i>Wisconsin</i>	1.841
<i>Wyoming</i>	0.400.

1 **“(C) APPLICATION OF MEDICAID COST**
2 **RECOVERY RULES.—Subject to section**

1 ***1903(d)(7) of the Social Security Act, a***
2 ***State may use amounts received under***
3 ***this paragraph as the State deter-***
4 ***mines appropriate.***

5 ***“(4) MINIMUM PAYMENTS TO SETTLEMENT***
6 ***STATES.—***

7 ***“(A) IN GENERAL.—In the case of***
8 ***the State of Florida, Minnesota, Mis-***
9 ***issippi, or Texas, the payment under***
10 ***paragraph (3)(A) for any calendar***
11 ***year shall be equal to the greater of—***

12 ***“(i) the amount of the payment***
13 ***determined under paragraph***
14 ***(3)(B), or***

15 ***“(ii) the aggregate payments***
16 ***which, but for paragraph (5),***
17 ***would have been received by such***
18 ***State for such calendar year***
19 ***under the settlement, judgment, or***
20 ***other agreement with respect to***
21 ***which payments were waived***
22 ***under paragraph (5).***

23 ***“(B) REALLOCATION OF AMOUNTS***
24 ***FOR OTHER STATES.—If the amount de-***
25 ***termined under subparagraph (A)(ii)***

1 *exceeds the amount determined under*
2 *subparagraph (A)(i) for 1 or more*
3 *States for any calendar year, the*
4 *amount of the payments under para-*
5 *graph (3)(A) to all States to which*
6 *subparagraph (A) does not apply shall*
7 *be ratably reduced by the aggregate*
8 *amount of such excess for all 4 States.*

9 **“(5) WAIVER OF PAYMENTS FROM STATE**
10 **LITIGATION.—**

11 **“(A) IN GENERAL.—***No payment*
12 *shall be made from the State Litiga-*
13 *tion Settlement Account to any State*
14 *unless such State agrees to waive its*
15 *rights to receive funds after the date*
16 *of the enactment of this Act under any*
17 *settlement, entry of a court judgment,*
18 *or other agreement, that resolves liti-*
19 *gation by the State against a tobacco*
20 *manufacturer or a group of tobacco*
21 *manufacturers for expenditures of the*
22 *State for tobacco-related diseases or*
23 *conditions.*

24 **“(B) REDISTRIBUTION OF WAIVED**
25 **PAYMENTS.—***If a waiver is not in effect*

1 *under this paragraph with respect to*
 2 *a State for a calendar year, any pay-*
 3 *ments out of the State Litigation Set-*
 4 *tlement Account which would other-*
 5 *wise have been made to such State*
 6 *shall be reallocated to all other States*
 7 *receiving such payments for such cal-*
 8 *endar year in the same proportion as*
 9 *the payments received by any State*
 10 *bear to all such payments.*

11 *“(C) WAIVER.—Any waiver under*
 12 *subparagraph (A) shall be made be-*
 13 *fore the date which is 1 year after the*
 14 *date of the enactment of this section*
 15 *and, once made, is irrevocable.*

16 *“(6) BUDGETARY TREATMENT.—This sub-*
 17 *section constitutes budget authority in ad-*
 18 *vance of appropriations Acts and rep-*
 19 *resents the obligation of the Federal Gov-*
 20 *ernment to provide payments to States in*
 21 *accordance with the provisions described*
 22 *in paragraph (3).*

23 *“(e) LIMITATION ON TRANSFERS TO TRUST*
 24 *FUND.—No amount may be appropriated to the*
 25 *National Tobacco Settlement Trust Fund or*

1 *the State Litigation Settlement Account on or*
 2 *after the date of any expenditure from such*
 3 *Trust Fund or Account which is not permitted*
 4 *by this section. The determination of whether*
 5 *an expenditure is so permitted shall be made*
 6 *without regard to—*

7 “(1) *any provision of law which is not*
 8 *contained or referenced in this title or in*
 9 *a revenue Act, and*

10 “(2) *whether such provision of law is a*
 11 *subsequently enacted provision or directly*
 12 *or indirectly seeks to waive the applica-*
 13 *tion of this subsection.”*

14 **(b) INTEREST NOT CREDITED TO TRUST**
 15 **FUND.—Section 9602(b)(3) (relating to interest**
 16 **on certain proceeds) is amended by striking**
 17 **“The interest” and inserting “Except with re-**
 18 **spect to the National Tobacco Settlement Trust**
 19 **Fund, the interest”.**

20 **(c) APPLICATION OF MEDICAID COST RECOV-**
 21 **ERY RULES.—Section 1903(d) of the Social Se-**
 22 **curity Act (42 U.S.C. 1396b(d)) is amended by**
 23 **adding at the end the following:**

24 **“(7)(A) Except as provided under subpara-**
 25 **graph (B), the provisions of this subsection re-**

1 *lating to the treatment of overpayments, and*
 2 *any other cost recovery rules applicable to pay-*
 3 *ments made under this title, shall apply to the*
 4 *portion of any of the following amounts that*
 5 *is used for expenditures under or related to the*
 6 *State plan (or a waiver of such plan) under*
 7 *this title:*

8 “(i) *Payments from the State Litiga-*
 9 *tion Settlement Account established under*
 10 *section 9512(d) of the Internal Revenue*
 11 *Code of 1986.*

12 “(ii) *Payments received as a result of*
 13 *litigation by the State against a tobacco*
 14 *manufacturer or a group of tobacco man-*
 15 *ufacturers based on expenditures of the*
 16 *State for tobacco-related diseases or con-*
 17 *ditions that is resolved through a settle-*
 18 *ment, entry of a court judgment, or other-*
 19 *wise.*

20 “(B) *Upon receipt of certification by the*
 21 *chief executive officer of a State that the State*
 22 *shall not use payments described in clauses (i)*
 23 *or (ii) of subparagraph (A) for expenditures*
 24 *under or related to the State plan (or a waiver*
 25 *of such plan) under this title, the Secretary*

1 *shall waive the application of the provisions*
 2 *of this subsection relating to the treatment of*
 3 *overpayments, and any other cost recovery*
 4 *rules applicable to payments made under this*
 5 *title, to such payments.”*

6 *(d) CLERICAL AMENDMENT.—The table of*
 7 *sections for subchapter A of chapter 98 is*
 8 *amended by adding at the end the following:*

“Sec. 9512. National Tobacco Settlement Trust Fund.”

9 *(e) EFFECTIVE DATE.—The amendments*
 10 *made by this section shall take effect on the*
 11 *date of the enactment of this Act.*

12 ***Subtitle B—Women’s Health and***
 13 ***Cancer Rights***

14 *SEC. 1411. SHORT TITLE.*

15 *This subtitle may be cited as the “Women’s*
 16 *Health and Cancer Rights Act of 1998”.*

17 *SEC. 1412. FINDINGS.*

18 ***Congress finds that—***

19 *(1) the offering and operation of*
 20 *health plans affect commerce among the*
 21 *States;*

22 *(2) health care providers located in a*
 23 *State serve patients who reside in the*
 24 *State and patients who reside in other*
 25 *States; and*

1 ***(3) in order to provide for uniform***
 2 ***treatment of health care providers and***
 3 ***patients among the States, it is necessary***
 4 ***to cover health plans operating in 1 State***
 5 ***as well as health plans operating among***
 6 ***the several States.***

7 ***SEC. 1413. AMENDMENTS TO THE EMPLOYEE RETIREMENT***
 8 ***INCOME SECURITY ACT OF 1974.***

9 ***(a) IN GENERAL.—Subpart B of part 7 of***
 10 ***subtitle B of title I of the Employee Retirement***
 11 ***Income Security Act of 1974 (29 U.S.C. 1185 et***
 12 ***seq.) is amended by adding at the end the fol-***
 13 ***lowing new section:***

14 ***“SEC. 713. REQUIRED COVERAGE FOR MINIMUM HOSPITAL***
 15 ***STAY FOR MASTECTOMIES AND LYMPH NODE***
 16 ***DISSECTIONS FOR THE TREATMENT OF***
 17 ***BREAST CANCER AND COVERAGE FOR RECON-***
 18 ***STRUCTIVE SURGERY FOLLOWING***
 19 ***MASTECTOMIES.***

20 ***“(a) INPATIENT CARE.—***

21 ***“(1) IN GENERAL.—A group health***
 22 ***plan, and a health insurance issuer pro-***
 23 ***viding health insurance coverage in con-***
 24 ***nection with a group health plan, that***
 25 ***provides medical and surgical benefits***

1 *shall ensure that inpatient coverage with*
2 *respect to the surgical treatment of breast*
3 *cancer (including a mastectomy,*
4 *lumpectomy, or lymph node dissection for*
5 *the treatment of breast cancer) is pro-*
6 *vided for a period of time as is determined*
7 *by the attending physician, in his or her*
8 *professional judgment consistent with sci-*
9 *entific evidence-based practice, in con-*
10 *sultation with the patient, and subject to*
11 *subsection (d), to be medically appro-*
12 *priate.*

13 “(2) *EXCEPTION.—Nothing in this sec-*
14 *tion shall be construed as requiring the*
15 *provision of inpatient coverage if the at-*
16 *tending physician in consultation with*
17 *the patient determine that a shorter pe-*
18 *riod of hospital stay is medically appro-*
19 *priate.*

20 “(b) *RECONSTRUCTIVE SURGERY.—A group*
21 *health plan, and a health insurance issuer*
22 *providing health insurance coverage in con-*
23 *nection with a group health plan, that pro-*
24 *vides medical and surgical benefits with re-*
25 *spect to a mastectomy shall ensure that, in a*

1 *case in which a mastectomy patient elects*
2 *breast reconstruction, coverage is provided*
3 *for—*

4 “(1) *all stages of reconstruction of the*
5 *breast on which the mastectomy has been*
6 *performed;*

7 “(2) *surgery and reconstruction of the*
8 *other breast to produce a symmetrical ap-*
9 *pearance; and*

10 “(3) *the costs of prostheses and com-*
11 *plications of mastectomy including*
12 *lymphedemas;*

13 *in the manner determined by the attending*
14 *physician and the patient to be appropriate.*
15 *Such coverage may be subject to annual*
16 *deductibles and coinsurance provisions as*
17 *may be deemed appropriate and as are consist-*
18 *ent with those established for other benefits*
19 *under the plan or coverage. Written notice of*
20 *the availability of such coverage shall be de-*
21 *livered to the participant upon enrollment and*
22 *annually thereafter.*

23 “(c) *NOTICE.—A group health plan, and a*
24 *health insurance issuer providing health in-*
25 *surance coverage in connection with a group*

1 *health plan shall provide notice to each par-*
 2 *ticipant and beneficiary under such plan re-*
 3 *garding the coverage required by this section*
 4 *in accordance with regulations promulgated*
 5 *by the Secretary. Such notice shall be in writ-*
 6 *ing and prominently positioned in any lit-*
 7 *erature or correspondence made available or*
 8 *distributed by the plan or issuer and shall be*
 9 *transmitted—*

10 “(1) *in the next mailing made by the*
 11 *plan or issuer to the participant or bene-*
 12 *ficiary;*

13 “(2) *as part of any yearly informa-*
 14 *tional packet sent to the participant or*
 15 *beneficiary; or*

16 “(3) *not later than January 1, 1998;*
 17 *whichever is earlier.*

18 “(d) **NO AUTHORIZATION REQUIRED.—**

19 “(1) **IN GENERAL.—***An attending physi-*
 20 *cian shall not be required to obtain au-*
 21 *thorization from the plan or issuer for*
 22 *prescribing any length of stay in connec-*
 23 *tion with a mastectomy, a lumpectomy, or*
 24 *a lymph node dissection for the treatment*
 25 *of breast cancer.*

1 “(2) **PRENOTIFICATION.**—*Nothing in*
2 *this section shall be construed as prevent-*
3 *ing a group health plan from requiring*
4 *prenotification of an inpatient stay re-*
5 *ferred to in this section if such require-*
6 *ment is consistent with terms and condi-*
7 *tions applicable to other inpatient bene-*
8 *fits under the plan, except that the provi-*
9 *sion of such inpatient stay benefits shall*
10 *not be contingent upon such notification.*

11 “(e) **PROHIBITIONS.**—*A group health plan,*
12 *and a health insurance issuer offering group*
13 *health insurance coverage in connection with*
14 *a group health plan, may not—*

15 “(1) *deny to a patient eligibility, or*
16 *continued eligibility, to enroll or to renew*
17 *coverage under the terms of the plan, sole-*
18 *ly for the purpose of avoiding the require-*
19 *ments of this section;*

20 “(2) *provide monetary payments or re-*
21 *bates to individuals to encourage such in-*
22 *dividuals to accept less than the mini-*
23 *imum protections available under this sec-*
24 *tion;*

1 “(3) *penalize or otherwise reduce or*
 2 *limit the reimbursement of an attending*
 3 *provider because such provider provided*
 4 *care to an individual participant or bene-*
 5 *ficiary in accordance with this section;*

6 “(4) *provide incentives (monetary or*
 7 *otherwise) to an attending provider to in-*
 8 *duce such provider to provide care to an*
 9 *individual participant or beneficiary in a*
 10 *manner inconsistent with this section;*
 11 *and*

12 “(5) *subject to subsection (f)(3), re-*
 13 *strict benefits for any portion of a period*
 14 *within a hospital length of stay required*
 15 *under subsection (a) in a manner which is*
 16 *less favorable than the benefits provided*
 17 *for any preceding portion of such stay.*

18 “(f) *RULES OF CONSTRUCTION.—*

19 “(1) *IN GENERAL.—Nothing in this sec-*
 20 *tion shall be construed to require a pa-*
 21 *tient who is a participant or beneficiary—*

22 “(A) *to undergo a mastectomy or*
 23 *lymph node dissection in a hospital;*
 24 *or*

1 “(B) *to stay in the hospital for a*
2 *fixed period of time following a mas-*
3 *tectomy or lymph node dissection.*

4 “(2) *LIMITATION.—This section shall*
5 *not apply with respect to any group*
6 *health plan, or any group health insur-*
7 *ance coverage offered by a health insur-*
8 *ance issuer, which does not provide bene-*
9 *fits for hospital lengths of stay in connec-*
10 *tion with a mastectomy or lymph node dis-*
11 *section for the treatment of breast cancer.*

12 “(3) *COST SHARING.—Nothing in this*
13 *section shall be construed as preventing a*
14 *group health plan or issuer from impos-*
15 *ing deductibles, coinsurance, or other*
16 *cost-sharing in relation to benefits for*
17 *hospital lengths of stay in connection*
18 *with a mastectomy or lymph node dissec-*
19 *tion for the treatment of breast cancer*
20 *under the plan (or under health insur-*
21 *ance coverage offered in connection with*
22 *a group health plan), except that such co-*
23 *insurance or other cost-sharing for any*
24 *portion of a period within a hospital*
25 *length of stay required under subsection*

1 *(a) may not be greater than such coinsur-*
2 *ance or cost-sharing for any preceding*
3 *portion of such stay.*

4 *“(4) LEVEL AND TYPE OF REIMBURSE-*
5 *MENTS.—Nothing in this section shall be*
6 *construed to prevent a group health plan*
7 *or a health insurance issuer offering*
8 *group health insurance coverage from ne-*
9 *gotiating the level and type of reimburse-*
10 *ment with a provider for care provided in*
11 *accordance with this section.*

12 *“(g) PREEMPTION, RELATION TO STATE*
13 *LAWS.—*

14 *“(1) IN GENERAL.—Nothing in this sec-*
15 *tion shall be construed to preempt any*
16 *State law in effect on the date of enact-*
17 *ment of this section with respect to health*
18 *insurance coverage that—*

19 *“(A) requires coverage for a mini-*
20 *imum hospital length of stay following*
21 *a surgical treatment for breast can-*
22 *cer;*

23 *“(B) requires coverage of at least*
24 *the coverage of reconstructive breast*

1 *surgery otherwise required under this*
2 *section; or*

3 “(C) *requires coverage for breast*
4 *cancer treatments (including breast*
5 *reconstruction) in accordance with*
6 *scientific evidence-based practices or*
7 *guidelines recommended by estab-*
8 *lished medical associations.*

9 “(2) *APPLICATION OF SECTION.—With re-*
10 *spect to a State law—*

11 “(A) *described in paragraph*
12 *(1)(A), the provisions of this section*
13 *relating to breast reconstruction shall*
14 *apply in such State; and*

15 “(B) *described in paragraph*
16 *(1)(B), the provisions of this section*
17 *relating to length of stays for surgical*
18 *breast treatment shall apply in such*
19 *State.*

20 “(3) *ERISA.—Nothing in this section*
21 *shall be construed to affect or modify the*
22 *provisions of section 514 with respect to*
23 *group health plans.”.*

24 “(b) *CLERICAL AMENDMENT.—The table of*
25 *contents in section 1 of the Employee Retire-*

1 *ment Income Security Act of 1974 (29 U.S.C.*
2 *1001 note) is amended by inserting after the*
3 *item relating to section 712 the following new*
4 *item:*

*“Sec. 713. Required coverage for minimum hospital stay for
mastectomies and lymph node dissections for the
treatment of breast cancer and coverage for recon-
structive surgery following mastectomies.”.*

5 (c) *EFFECTIVE DATES.—*

6 (1) *IN GENERAL.—The amendments*
7 *made by this section shall apply with re-*
8 *spect to plan years beginning on or after*
9 *the date of enactment of this Act.*

10 (2) *SPECIAL RULE FOR COLLECTIVE BAR-*
11 *GAINING AGREEMENTS.—In the case of a*
12 *group health plan maintained pursuant*
13 *to 1 or more collective bargaining agree-*
14 *ments between employee representatives*
15 *and 1 or more employers, any plan*
16 *amendment made pursuant to a collective*
17 *bargaining agreement relating to the*
18 *plan which amends the plan solely to con-*
19 *form to any requirement added by this*
20 *section shall not be treated as a termi-*
21 *nation of such collective bargaining*
22 *agreement.*

1 *SEC. 1414. AMENDMENTS TO THE PUBLIC HEALTH SERVICE*
 2 *ACT RELATING TO THE GROUP MARKET.*

3 *(a) IN GENERAL.—Subpart 2 of part A of*
 4 *title XXVII of the Public Health Service Act (42*
 5 *U.S.C. 300gg-4 et seq.) is amended by adding*
 6 *at the end the following new section:*

7 *“SEC. 2706. REQUIRED COVERAGE FOR MINIMUM HOSPITAL*
 8 *STAY FOR MASTECTOMIES AND LYMPH NODE*
 9 *DISSECTIONS FOR THE TREATMENT OF*
 10 *BREAST CANCER AND COVERAGE FOR RECON-*
 11 *STRUCTIVE SURGERY FOLLOWING*
 12 *MASTECTOMIES.*

13 *“(a) INPATIENT CARE.—*

14 *“(1) IN GENERAL.—A group health*
 15 *plan, and a health insurance issuer pro-*
 16 *viding health insurance coverage in con-*
 17 *nection with a group health plan, that*
 18 *provides medical and surgical benefits*
 19 *shall ensure that inpatient coverage with*
 20 *respect to the surgical treatment of breast*
 21 *cancer (including a mastectomy,*
 22 *lumpectomy, or lymph node dissection for*
 23 *the treatment of breast cancer) is pro-*
 24 *vided for a period of time as is determined*
 25 *by the attending physician, in his or her*
 26 *professional judgment consistent with sci-*

1 *entific evidence-based practice, in con-*
2 *sultation with the patient, and subject to*
3 *subsection (d), to be medically appro-*
4 *priate.*

5 “(2) *EXCEPTION.—Nothing in this sec-*
6 *tion shall be construed as requiring the*
7 *provision of inpatient coverage if the at-*
8 *tending physician in consultation with*
9 *the patient determine that a shorter pe-*
10 *riod of hospital stay is medically appro-*
11 *priate.*

12 “(b) *RECONSTRUCTIVE SURGERY.—A group*
13 *health plan, and a health insurance issuer*
14 *providing health insurance coverage in con-*
15 *nection with a group health plan, that pro-*
16 *vides medical and surgical benefits with re-*
17 *spect to a mastectomy shall ensure that, in a*
18 *case in which a mastectomy patient elects*
19 *breast reconstruction, coverage is provided*
20 *for—*

21 “(1) *all stages of reconstruction of the*
22 *breast on which the mastectomy has been*
23 *performed;*

1 “(2) *surgery and reconstruction of the*
2 *other breast to produce a symmetrical ap-*
3 *pearance; and*

4 “(3) *the costs of prostheses and com-*
5 *plications of mastectomy including*
6 *lymphedemas;*

7 *in the manner determined by the attending*
8 *physician and the patient to be appropriate.*
9 *Such coverage may be subject to annual*
10 *deductibles and coinsurance provisions as*
11 *may be deemed appropriate and as are consist-*
12 *ent with those established for other benefits*
13 *under the plan or coverage. Written notice of*
14 *the availability of such coverage shall be de-*
15 *livered to the enrollee upon enrollment and*
16 *annually thereafter.*

17 “(c) *NOTICE.—A group health plan, and a*
18 *health insurance issuer providing health in-*
19 *surance coverage in connection with a group*
20 *health plan shall provide notice to each par-*
21 *ticipant and beneficiary under such plan re-*
22 *garding the coverage required by this section*
23 *in accordance with regulations promulgated*
24 *by the Secretary. Such notice shall be in writ-*
25 *ing and prominently positioned in any lit-*

1 *erature or correspondence made available or*
2 *distributed by the plan or issuer and shall be*
3 *transmitted—*

4 “(1) *in the next mailing made by the*
5 *plan or issuer to the participant or bene-*
6 *ficiary;*

7 “(2) *as part of any yearly informa-*
8 *tional packet sent to the participant or*
9 *beneficiary; or*

10 “(3) *not later than January 1, 1998;*
11 *whichever is earlier.*

12 “(d) *NO AUTHORIZATION REQUIRED.—*

13 “(1) *IN GENERAL.—An attending physi-*
14 *cian shall not be required to obtain au-*
15 *thorization from the plan or issuer for*
16 *prescribing any length of stay in connec-*
17 *tion with a mastectomy, a lumpectomy, or*
18 *a lymph node dissection for the treatment*
19 *of breast cancer.*

20 “(2) *PRENOTIFICATION.—Nothing in*
21 *this section shall be construed as prevent-*
22 *ing a plan or issuer from requiring*
23 *prenotification of an inpatient stay re-*
24 *ferred to in this section if such require-*
25 *ment is consistent with terms and condi-*

1 *tions applicable to other inpatient bene-*
2 *fits under the plan, except that the provi-*
3 *sion of such inpatient stay benefits shall*
4 *not be contingent upon such notification.*

5 *“(e) PROHIBITIONS.—A group health plan,*
6 *and a health insurance issuer offering group*
7 *health insurance coverage in connection with*
8 *a group health plan, may not—*

9 *“(1) deny to a patient eligibility, or*
10 *continued eligibility, to enroll or to renew*
11 *coverage under the terms of the plan, sole-*
12 *ly for the purpose of avoiding the require-*
13 *ments of this section;*

14 *“(2) provide monetary payments or re-*
15 *bates to individuals to encourage such in-*
16 *dividuals to accept less than the mini-*
17 *mum protections available under this sec-*
18 *tion;*

19 *“(3) penalize or otherwise reduce or*
20 *limit the reimbursement of an attending*
21 *provider because such provider provided*
22 *care to an individual participant or bene-*
23 *ficiary in accordance with this section;*

24 *“(4) provide incentives (monetary or*
25 *otherwise) to an attending provider to in-*

1 *duce such provider to provide care to an*
 2 *individual participant or beneficiary in a*
 3 *manner inconsistent with this section;*
 4 *and*

5 *“(5) subject to subsection (f)(3), re-*
 6 *strict benefits for any portion of a period*
 7 *within a hospital length of stay required*
 8 *under subsection (a) in a manner which is*
 9 *less favorable than the benefits provided*
 10 *for any preceding portion of such stay.*

11 *“(f) RULES OF CONSTRUCTION.—*

12 *“(1) IN GENERAL.—Nothing in this sec-*
 13 *tion shall be construed to require a pa-*
 14 *tient who is a participant or beneficiary—*

15 *“(A) to undergo a mastectomy or*
 16 *lymph node dissection in a hospital;*
 17 *or*

18 *“(B) to stay in the hospital for a*
 19 *fixed period of time following a mas-*
 20 *tectomy or lymph node dissection.*

21 *“(2) LIMITATION.—This section shall*
 22 *not apply with respect to any group*
 23 *health plan, or any group health insur-*
 24 *ance coverage offered by a health insur-*
 25 *ance issuer, which does not provide bene-*

1 *fits for hospital lengths of stay in connec-*
2 *tion with a mastectomy or lymph node dis-*
3 *section for the treatment of breast cancer.*

4 “(3) *COST SHARING.—Nothing in this*
5 *section shall be construed as preventing a*
6 *group health plan or issuer from impos-*
7 *ing deductibles, coinsurance, or other*
8 *cost-sharing in relation to benefits for*
9 *hospital lengths of stay in connection*
10 *with a mastectomy or lymph node dissec-*
11 *tion for the treatment of breast cancer*
12 *under the plan (or under health insur-*
13 *ance coverage offered in connection with*
14 *a group health plan), except that such co-*
15 *insurance or other cost-sharing for any*
16 *portion of a period within a hospital*
17 *length of stay required under subsection*
18 *(a) may not be greater than such coinsur-*
19 *ance or cost-sharing for any preceding*
20 *portion of such stay.*

21 “(4) *LEVEL AND TYPE OF REIMBURSE-*
22 *MENTS.—Nothing in this section shall be*
23 *construed to prevent a group health plan*
24 *or a health insurance issuer offering*
25 *group health insurance coverage from ne-*

1 *gotiating the level and type of reimburse-*
2 *ment with a provider for care provided in*
3 *accordance with this section.*

4 **“(g) PREEMPTION, RELATION TO STATE**
5 **LAWS.—**

6 **“(1) IN GENERAL.—***Nothing in this sec-*
7 *tion shall be construed to preempt any*
8 *State law in effect on the date of enact-*
9 *ment of this section with respect to health*
10 *insurance coverage that—*

11 **“(A) requires coverage for a mini-**
12 *imum hospital length of stay following*
13 *a surgical treatment for breast can-*
14 *cer;*

15 **“(B) requires coverage of at least**
16 *the coverage of reconstructive breast*
17 *surgery otherwise required under this*
18 *section; or*

19 **“(C) requires coverage for breast**
20 *cancer treatments (including breast*
21 *reconstruction) in accordance with*
22 *scientific evidence-based practices or*
23 *guidelines recommended by estab-*
24 *lished medical associations.*

1 ***“(2) APPLICATION OF SECTION.—With re-***
2 ***spect to a State law—***

3 ***“(A) described in paragraph***
4 ***(1)(A), the provisions of this section***
5 ***relating to breast reconstruction shall***
6 ***apply in such State; and***

7 ***“(B) described in paragraph***
8 ***(1)(B), the provisions of this section***
9 ***relating to length of stays for surgical***
10 ***breast treatment shall apply in such***
11 ***State.***

12 ***“(3) ERISA.—Nothing in this section***
13 ***shall be construed to affect or modify the***
14 ***provisions of section 514 of the Employee***
15 ***Retirement Income Security Act of 1974***
16 ***with respect to group health plans.”.***

17 ***(b) EFFECTIVE DATES.—***

18 ***(1) IN GENERAL.—The amendments***
19 ***made by this section shall apply to group***
20 ***health plans for plan years beginning on***
21 ***or after the date of enactment of this Act.***

22 ***(2) SPECIAL RULE FOR COLLECTIVE BAR-***
23 ***GAINING AGREEMENTS.—In the case of a***
24 ***group health plan maintained pursuant***
25 ***to 1 or more collective bargaining agree-***

1 *ments between employee representatives*
 2 *and 1 or more employers, any plan*
 3 *amendment made pursuant to a collective*
 4 *bargaining agreement relating to the*
 5 *plan which amends the plan solely to con-*
 6 *form to any requirement added by this*
 7 *section shall not be treated as a termi-*
 8 *nation of such collective bargaining*
 9 *agreement.*

10 *SEC. 1415. AMENDMENT TO THE PUBLIC HEALTH SERVICE*

11 *ACT RELATING TO THE INDIVIDUAL MARKET.*

12 *(a) IN GENERAL.—Subpart 3 of part B of*
 13 *title XXVII of the Public Health Service Act (42*
 14 *U.S.C. 300gg-11 et seq.) is amended by adding*
 15 *at the end the following new section:*

16 *“SEC. 2752. REQUIRED COVERAGE FOR MINIMUM HOSPITAL*

17 *STAY FOR MASTECTOMIES AND LYMPH NODE*

18 *DISSECTIONS FOR THE TREATMENT OF*

19 *BREAST CANCER.*

20 *“The provisions of section 2706 shall apply*
 21 *to health insurance coverage offered by a*
 22 *health insurance issuer in the individual mar-*
 23 *ket in the same manner as they apply to health*
 24 *insurance coverage offered by a health insur-*

1 *ance issuer in connection with a group health*
 2 *plan in the small or large group market.”.*

3 *(b) EFFECTIVE DATE.—The amendment*
 4 *made by this section shall apply with respect*
 5 *to health insurance coverage offered, sold,*
 6 *issued, renewed, in effect, or operated in the*
 7 *individual market on or after the date of en-*
 8 *actment of this Act.*

9 *SEC. 1416. AMENDMENTS TO THE INTERNAL REVENUE*
 10 *CODE OF 1986.*

11 *(a) IN GENERAL.—Subchapter A of chapter*
 12 *100 (relating to group health plan portability,*
 13 *access, and renewability requirements) is*
 14 *amended by inserting after section 9803 the*
 15 *following new section:*

16 *“SEC. 9804. REQUIRED COVERAGE FOR MINIMUM HOSPITAL*
 17 *STAY FOR MASTECTOMIES AND LYMPH NODE*
 18 *DISSECTIONS FOR THE TREATMENT OF*
 19 *BREAST CANCER AND COVERAGE FOR RECON-*
 20 *STRUCTIVE SURGERY FOLLOWING*
 21 *MASTECTOMIES.*

22 *“(a) INPATIENT CARE.—*

23 *“(1) IN GENERAL.—A group health*
 24 *plan, and a health insurance issuer pro-*
 25 *viding health insurance coverage in con-*

1 *nection with a group health plan, that*
2 *provides medical and surgical benefits*
3 *shall ensure that inpatient coverage with*
4 *respect to the surgical treatment of breast*
5 *cancer (including a mastectomy,*
6 *lumpectomy, or lymph node dissection for*
7 *the treatment of breast cancer) is pro-*
8 *vided for a period of time as is determined*
9 *by the attending physician, in his or her*
10 *professional judgment consistent with sci-*
11 *entific evidence-based practice, in con-*
12 *sultation with the patient, and subject to*
13 *subsection (d), to be medically appro-*
14 *priate.*

15 *“(2) EXCEPTION.—Nothing in this sec-*
16 *tion shall be construed as requiring the*
17 *provision of inpatient coverage if the at-*
18 *tending physician in consultation with*
19 *the patient determine that a shorter pe-*
20 *riod of hospital stay is medically appro-*
21 *priate.*

22 *“(b) RECONSTRUCTIVE SURGERY.—A group*
23 *health plan, and a health insurance issuer*
24 *providing health insurance coverage in con-*
25 *nection with a group health plan, that pro-*

1 *vides medical and surgical benefits with re-*
2 *spect to a mastectomy shall ensure that, in a*
3 *case in which a mastectomy patient elects*
4 *breast reconstruction, coverage is provided*
5 *for—*

6 *“(1) all stages of reconstruction of the*
7 *breast on which the mastectomy has been*
8 *performed;*

9 *“(2) surgery and reconstruction of the*
10 *other breast to produce a symmetrical ap-*
11 *pearance; and*

12 *“(3) the costs of prostheses and com-*
13 *plications of mastectomy including*
14 *lymphedemas;*

15 *in the manner determined by the attending*
16 *physician and the patient to be appropriate.*
17 *Such coverage may be subject to annual*
18 *deductibles and coinsurance provisions as*
19 *may be deemed appropriate and as are consist-*
20 *ent with those established for other benefits*
21 *under the plan or coverage. Written notice of*
22 *the availability of such coverage shall be de-*
23 *livered to the participant upon enrollment and*
24 *annually thereafter.*

1 “(c) *NOTICE.—A group health plan, and a*
2 *health insurance issuer providing health in-*
3 *surance coverage in connection with a group*
4 *health plan shall provide notice to each par-*
5 *ticipant and beneficiary under such plan re-*
6 *garding the coverage required by this section*
7 *in accordance with regulations promulgated*
8 *by the Secretary. Such notice shall be in writ-*
9 *ing and prominently positioned in any lit-*
10 *erature or correspondence made available or*
11 *distributed by the plan or issuer and shall be*
12 *transmitted—*

13 “(1) *in the next mailing made by the*
14 *plan or issuer to the participant or bene-*
15 *ficiary;*

16 “(2) *as part of any yearly informa-*
17 *tional packet sent to the participant or*
18 *beneficiary; or*

19 “(3) *not later than January 1, 1998;*
20 *whichever is earlier.*

21 “(d) *NO AUTHORIZATION REQUIRED.—*

22 “(1) *IN GENERAL.—A, attending physi-*
23 *cian shall not be required to obtain au-*
24 *thorization from the plan or issuer for*
25 *prescribing any length of stay in connec-*

1 *tion with a mastectomy, a lumpectomy, or*
2 *a lymph node dissection for the treatment*
3 *of breast cancer.*

4 “(2) *PRENOTIFICATION.—Nothing in*
5 *this section shall be construed as prevent-*
6 *ing a plan or issuer from requiring*
7 *prenotification of an inpatient stay re-*
8 *ferred to in this section if such require-*
9 *ment is consistent with terms and condi-*
10 *tions applicable to other inpatient bene-*
11 *fits under the plan, except that the provi-*
12 *sion of such inpatient stay benefits shall*
13 *not be contingent upon such notification.*

14 “(e) *PROHIBITIONS.—A group health plan,*
15 *and a health insurance issuer offering group*
16 *health insurance coverage in connection with*
17 *a group health plan, may not—*

18 “(1) *deny to a patient eligibility, or*
19 *continued eligibility, to enroll or to renew*
20 *coverage under the terms of the plan, sole-*
21 *ly for the purpose of avoiding the require-*
22 *ments of this section;*

23 “(2) *provide monetary payments or re-*
24 *bates to individuals to encourage such in-*
25 *dividuals to accept less than the mini-*

1 *mun protections available under this sec-*
2 *tion;*

3 *“(3) penalize or otherwise reduce or*
4 *limit the reimbursement of an attending*
5 *provider because such provider provided*
6 *care to an individual participant or bene-*
7 *ficiary in accordance with this section;*

8 *“(4) provide incentives (monetary or*
9 *otherwise) to an attending provider to in-*
10 *duce such provider to provide care to an*
11 *individual participant or beneficiary in a*
12 *manner inconsistent with this section;*
13 *and*

14 *“(5) subject to subsection (f)(3), re-*
15 *strict benefits for any portion of a period*
16 *within a hospital length of stay required*
17 *under subsection (a) in a manner which is*
18 *less favorable than the benefits provided*
19 *for any preceding portion of such stay.*

20 *“(f) RULES OF CONSTRUCTION.—*

21 *“(1) IN GENERAL.—Nothing in this sec-*
22 *tion shall be construed to require a pa-*
23 *tient who is a participant or beneficiary—*

1 “(A) *to undergo a mastectomy or*
2 *lymph node dissection in a hospital;*
3 *or*

4 “(B) *to stay in the hospital for a*
5 *fixed period of time following a mas-*
6 *tectomy or lymph node dissection.*

7 “(2) *LIMITATION.—This section shall*
8 *not apply with respect to any group*
9 *health plan, or any group health insur-*
10 *ance coverage offered by a health insur-*
11 *ance issuer, which does not provide bene-*
12 *fits for hospital lengths of stay in connec-*
13 *tion with a mastectomy or lymph node dis-*
14 *section for the treatment of breast cancer.*

15 “(3) *COST SHARING.—Nothing in this*
16 *section shall be construed as preventing a*
17 *group health plan or issuer from impos-*
18 *ing deductibles, coinsurance, or other*
19 *cost-sharing in relation to benefits for*
20 *hospital lengths of stay in connection*
21 *with a mastectomy or lymph node dissec-*
22 *tion for the treatment of breast cancer*
23 *under the plan (or under health insur-*
24 *ance coverage offered in connection with*
25 *a group health plan), except that such co-*

1 *insurance or other cost-sharing for any*
2 *portion of a period within a hospital*
3 *length of stay required under subsection*
4 *(a) may not be greater than such coinsur-*
5 *ance or cost-sharing for any preceding*
6 *portion of such stay.*

7 “(4) *LEVEL AND TYPE OF REIMBURSE-*
8 *MENTS.—Nothing in this section shall be*
9 *construed to prevent a group health plan*
10 *or a health insurance issuer offering*
11 *group health insurance coverage from ne-*
12 *gotiating the level and type of reimburse-*
13 *ment with a provider for care provided in*
14 *accordance with this section.*

15 “(g) *PREEMPTION, RELATION TO STATE*
16 *LAWS.—*

17 “(1) *IN GENERAL.—Nothing in this sec-*
18 *tion shall be construed to preempt any*
19 *State law in effect on the date of enact-*
20 *ment of this section with respect to health*
21 *insurance coverage that—*

22 “(A) *requires coverage for a mini-*
23 *imum hospital length of stay following*
24 *a surgical treatment for breast can-*
25 *cer;*

1 “(B) requires coverage of at least
2 the coverage of reconstructive breast
3 surgery otherwise required under this
4 section; or

5 “(C) requires coverage for breast
6 cancer treatments (including breast
7 reconstruction) in accordance with
8 scientific evidence-based practices or
9 guidelines recommended by estab-
10 lished medical associations.

11 “(2) APPLICATION OF SECTION.—With re-
12 spect to a State law—

13 “(A) described in paragraph
14 (1)(A), the provisions of this section
15 relating to breast reconstruction shall
16 apply in such State; and

17 “(B) described in paragraph
18 (1)(B), the provisions of this section
19 relating to length of stays for surgical
20 breast treatment shall apply in such
21 State.

22 “(3) ERISA.—Nothing in this section
23 shall be construed to affect or modify the
24 provisions of section 514 of the Employee

1 *Retirement Income Security Act of 1974*
 2 *with respect to group health plans.”.*

3 **(b) CONFORMING AMENDMENTS.—**

4 *(1) The heading for subtitle K is*
 5 *amended to read as follows:*

6 **“Subtitle K—Group Health Plan**
 7 **Portability, Access, Renewabil-**
 8 **ity, and Other Requirements”.**

9 *(2) The heading for chapter 100 is*
 10 *amended to read as follows:*

11 **“CHAPTER 100—GROUP HEALTH PLAN**
 12 **PORTABILITY, ACCESS, RENEWABIL-**
 13 **ITY, AND OTHER REQUIREMENTS”.**

14 *(3) Section 4980D(a) is amended by*
 15 *striking “and renewability” and inserting*
 16 *“renewability, and other”.*

17 **(c) CLERICAL AMENDMENTS.—**

18 *(1) The table of contents for chapter*
 19 *100 is amended inserting after the item re-*
 20 *lating to section 9803 the following new*
 21 *item:*

“Sec. 9804. Required coverage for minimum hospital stay for
 mastectomies and lymph node dissections for the
 treatment of breast cancer and coverage for recon-
 structive surgery following mastectomies.”.

22 *(2) The item relating to subtitle K in*
 23 *the table of subtitles is amended by strik-*

1 *ing “and renewability” and inserting “re-*
2 *newability, and other”.*

3 (3) *The item relating to chapter 100 in*
4 *the table of chapters for subtitle K is*
5 *amended by striking “and renewability”*
6 *and inserting “renewability, and other”.*

7 (d) **EFFECTIVE DATES.—**

8 (1) **IN GENERAL.—***The amendments*
9 *made by this section shall apply with re-*
10 *spect to plan years beginning on or after*
11 *the date of enactment of this Act.*

12 (2) **SPECIAL RULE FOR COLLECTIVE BAR-**
13 **GAINING AGREEMENTS.—***In the case of a*
14 *group health plan maintained pursuant*
15 *to 1 or more collective bargaining agree-*
16 *ments between employee representatives*
17 *and 1 or more employers, any plan*
18 *amendment made pursuant to a collective*
19 *bargaining agreement relating to the*
20 *plan which amends the plan solely to con-*
21 *form to any requirement added by this*
22 *section shall not be treated as a termi-*
23 *nation of such collective bargaining*
24 *agreement.*

1 *SEC. 1417. RESEARCH STUDY ON THE MANAGEMENT OF*
2 *BREAST CANCER.*

3 *(a) STUDY.—To improve survival, quality of*
4 *life and patient satisfaction in the care of pa-*
5 *tients with breast cancer, the Agency for*
6 *Health Care Policy and Research shall con-*
7 *duct a study of the scientific issues relating*
8 *to—*

9 *(1) disease management strategies for*
10 *breast cancer that can achieve better pa-*
11 *tient outcomes;*

12 *(2) controlled clinical evidence that*
13 *links specific clinical procedures to im-*
14 *proved health outcomes;*

15 *(3) the definition of quality measures*
16 *to evaluate plan and provider perform-*
17 *ance in the management of breast cancer;*

18 *(4) the identification of quality im-*
19 *provement interventions that can change*
20 *the process of care to achieve better out-*
21 *comes for individuals with breast cancer;*

22 *(5) preventive strategies utilized by*
23 *health plans for the treatment of breast*
24 *cancer; and*

1 ***(6) the extent of clinical practice vari-***
 2 ***ation including its impact on cost, quality***
 3 ***and outcomes.***

4 ***(b) REPORT.—Not later than January 1,***
 5 ***2000, the Agency for Health Care Policy and***
 6 ***Research shall prepare and submit to the ap-***
 7 ***propriate committees of Congress a report con-***
 8 ***cerning the results of the study conducted***
 9 ***under subsection (a).***

10 ***Subtitle C—Limitations Applicable***
 11 ***to Other Provisions***

12 ***SEC. 1421. LIMITATIONS ON EXPENDITURES AND OBLIGA-***
 13 ***TIONS.***

14 ***Notwithstanding any other provision of***
 15 ***this Act—***

16 ***(1) any expenditure required by this***
 17 ***Act shall be made from the National To-***
 18 ***bacco Settlement Trust Fund or the De-***
 19 ***partment of Veterans Affairs Tobacco Re-***
 20 ***covery Fund, whichever is applicable; and***

21 ***(2) with the exception of title X of this***
 22 ***Act and section 9512(d) of the Internal***
 23 ***Revenue Code of 1986, the Federal Govern-***
 24 ***ment shall only be obligated to make ex-***
 25 ***penditures as required by this Act, includ-***

1 *ing any payment to any person or govern-*
2 *ment, as provided in advance in appro-*
3 *priations Acts.*

4 **SEC. 1422. LIMITATION ON USER FEES.**

5 **(a) IN GENERAL.**—*Notwithstanding any*
6 *other provision of, or amendment made by, this*
7 *Act, no fee or charge imposed by such provi-*
8 *sion or amendment shall take effect unless*
9 *such fee or charge is—*

10 *(1) for a voluntary service,*

11 *(2) imposed on the direct beneficiaries*
12 *of such service, and*

13 *(3) in an amount which does not ex-*
14 *ceed the direct cost of providing such serv-*
15 *ice to such beneficiaries.*

16 **(b) FEE OR CHARGE.**—*For purposes of sub-*
17 *section (a), the term “fee or charge” does not*
18 *include any civil or criminal penalty or fine.*